76-976

In the

Supreme Court of the United States

October Term, 1976

Levan Roundtree, *et al.*,

Appellants,

v.

Stephen Berger, individually and as Commissioner of the New York State Department of Social Services, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

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No. ____________

LEVAN ROUNDTREE, et al.,

Appellants,

v.

STEPHEN BERGER, individually and as Commissioner of the New York State Department of Social Services, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

This is an appeal from the judgment of the United States District Court for the Eastern District of New York, entered on September 20, 1976, denying appellants'

motion for a permanent injunction against enforcement of a New York statute, and dismissing their complaint. Appellants[1] submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion of the District Court for the Eastern District of New York and the dissenting opinion of District Judge Jack B. Weinstein are reported at 420 F.Supp. 282 (1976). Copies of these opinions are attached hereto as Appendix "A".

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[1] Appellants are LEVAN ROUNDTREE and DELORES ROUNDTREE, individually and on behalf of their minor children and all persons similarly situated, and intervenors JOHN FOLSOM, VICTORIA FOLSOM, VINCENZO PELLIGRINO, and ANNA PELLIGRINO, individually and on behalf of their minor children.

Appellees are STEPHEN BERGER, individually and as Commissioner of the New York State Department of Social Services, JAMES DUMPSON, individually and as Commissioner of the New York City Department of Social Services, and THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES.

JURISDICTION

Appellants instituted this action pursuant to 42 USC §1983 and 28 USC §1343(3) seeking to permanently enjoin the enforcement of a New York State statute and regulation of statewide applicability on the grounds of their unconstitutionality. Appellants further sought a declaration of the unconstitutionality of the challenged authorities.

On September 17, 1976, a three-judge court, convened pursuant to 28 USC §§2281, 2284, filed a memorandum and order upholding the constitutionality of the challenged authorities. A dissenting opinion was filed by District Judge Jack B. Weinstein (Appendix A). A judgment dated and entered September 20, 1976 denied appellants' motion for a permanent injunction and dismissed their complaint. A copy of the judgment is attached hereto as Appendix B.

A Notice of Appeal to this Court was

filed in the United States District Court for the Eastern District of New York on November 15, 1976. A copy of the Notice of Appeal is attached hereto as Appendix C.

The jurisdiction of this Court to review the decision of the district court on direct appeal is conferred by 28 USC §1253.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

Amendment XIV to the Constitution of the United States provides in relevant part:

> No State shall ... deny to any person within its jurisdiction the equal protection of the laws.

The constitutionality of New York Social Services Law Section 131-i and Title 18 New York Code of Rules and Regulations ("NYCRR") Section 352.19(c) are here involved.

Social Services Law §131-i appears in

McKinney's Consolidated Laws of New York Annotated, Volume 52A, Page 235.

New York Social Services Law §131-i:

Expenses necessary and incident to employment; maximum allowance from earnings

Whenever any applicant for or recipient of public assistance is employed, provision may be made for allowing appropriate amounts from his earnings for expenses necessary and incident to his employment, but in no case shall such allowance exceed eighty dollars per month unless required by federal law or regulation. The allowance provided herein shall not apply with respect to income earned by recipients of home relief in public work projects.

18 New York Code of Rules and Regulations §352.19(c) appears in the Official Compilation Codes, Rules, and Regulations of the State of New York, Volume 18, Page 159. The full text of 18 NYCRR §352.19 is set out at Appendix "D".

QUESTION PRESENTED

The district court upheld against

appellants' equal protection challenge New York Social Services Law §131-i, which by placing an $80 monthly ceiling on the deductible work expenses of working claimants of Home Relief, denies supplementary Home Relief welfare benefits to workers with less disposable income than the State provides to unemployed Home Relief recipients. The question presented is,

> Whether the classification created by Social Services Law §131-i, meets the requirement of minimal rationality imposed by the equal protection clause?

STATEMENT OF THE CASE

Appellants are working claimants[2] of Home Relief, New York's state-funded welfare program for needy children and adults in two-parent families, who are not

2. The term "claimants," as used herein, means both applicants for and recipients of Home Relief.

eligible for federally assisted Aid to Families with Dependent Children ("AFDC"). 42 USC §601 et. seq.[3]

Eligibility for Home Relief is determined by comparing a family's net income with a statewide standard of need related to family size. New York Social Services Law ("Social Services Law") §131-a. If a family has no income, Home Relief pays them the full standard of need. If the net earned income of a working person's family is less than the standard of need, the deficit is paid, raising their income to the level of unemployed Home Relief recipients. Net income is gross earnings minus allowable work expenses enumerated in 18 New York Code of Rules and Regulations ("NYCRR") §352.19(a). (A-51). These work expenses include all income taxes,

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[3] AFDC is provided to families deprived of the support of a parent because of death, absence, or incapacity. 42 USC §606(a).

social security tax, union dues, permit and license fees, transportation, costs of tools and uniforms, group insurance, and $1.00 per day for lunch.

Prior to June 14, 1972, 18 NYCRR §352.19 authorized the deduction of the full amount of these necessary work related expenses in determining eligibility for and amount of Home Relief. In 1971, New York amended the Social Services Law by placing a $60 per month ceiling on the deduction of work related expenses in the Home Relief program. Laws 1971, chap. 946, §2, eff. July 1, 1971. This ceiling was raised to the present level of $80 per month in 1974. Laws, 1974, chap. 1059, §1 eff. Sept. 1, 1974. The $80 work expenses ceiling is codified as Social Services Law 131-i. Page 5 supra. The implementing regulation is 18 NYCRR §352.19(c). (A-53).

At present a working applicant for Home Relief with monthly work expenses in excess of $80 has only $80 deducted from gross earnings, resulting in an overstatement of net income. As a result, a family may be ineligible for Home Relief, even though they have less disposable income than the need standard paid to unemployed Home Relief recipients. In addition to the loss of cash Home Relief benefits, they are also denied the automatic Medicaid Coverage bestowed on all recipients of Home Relief.[4] Social Services Law §366.

Appellant Levan Roundtree, a truck driver, is the sole support of his family of six. His actual monthly work related expenses, computed in accordance with 18

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[4] The yearly value of Medicaid for a family of four in New York averaged <u>$2150</u> in 1975. Senator William T. Smith, Chairman New York State Temporary Commission to Revise the Social Services Law, "Public Welfare--The Impossible Dream," Address presented at the County Officers Association of the State of New York 1975 Annual Fall Seminar, September 22, 1975, p. 4.

NYCRR §352.19(a) are $156.66. Of these $88.66 are involuntary payroll deductions for taxes, Social Security, and union dues. (A-16.)

Because of the non-deductibility of work expenses above $80 monthly, the Roundtrees' application for Home Relief was denied by appellee Dumpson, even though their disposable income is well below the statewide welfare subsistence standard paid to non-working Home Relief recipients. The denial was affirmed in a fair hearing decision rendered by the appellee State Commissioner. As a result of appellees' enforcement of the $80 work expenses ceiling, the Roundtrees have only 68% of the welfare subsistence income level provided by the State to a Home Relief family for their necessities. (A-16.)

Appellant-intervenor Vincenzo Pelligrino, a mason's helper, and his

family of nine receive supplementary Home Relief, because his net earnings, as calculated by appellees, are less than the need standard. However, because only \$80 of his actual monthly work expenses of \$112.67 are deducted in determining the grant, this worker's family has to exist on \$32.67 less monthly than the State pays to a family of nine in which no one works.

Similarly, the Folsoms, appellant-intervenors, a family of seven, must live on \$23.56 less than the welfare subsistence standard because only \$80 of Mr. Folsom's \$103.56 monthly work expenses are deductible. Mr. Folsom, a janitor, incurs \$64.06 in monthly involuntary payroll deductions, despite the fact that his income is so low that no federal income tax is withheld. (A-16.)

Levan and Delores Roundtree filed their complaint on July 1, 1975, seeking a declaration of the unconstitutionality

of Social Services Law §131-i and 18 NYCRR §352.19(c), and an injunction against their enforcement. On July 3, 1975 the Roundtrees moved for class certification, convening of a three-judge court, and a preliminary injunction. The Folsoms and Pelligrino's moved to intervene as plaintiffs on August 4, 1975. In an Order dated and entered August 21, 1975, District Judge Jack B. Weinstein granted appellants' motions to certify a class pursuant to Rule 23 of the Federal Rules of Civil Procedure ("FRCP"), convene a three-judge court pursuant to 28 USC §§ 2281, 2284, permit intervention pursuant to Rule 24 FRCP, and denied appellees' cross motions to dismiss the complaint for lack of jurisdiction and failure to state a claim for which relief could be granted.

A three-judge court of District Judge Weinstein, Circuit Judge Thomas J. Meskill and District Judge Mark A.

Costantino was convened and heard oral argument.

In an order entered November 26, 1975, the court denied appellants' motion for a preliminary injunction, reserved decision on their application for a permanent injunction, and invited the parties to submit empirical data to support their claims concerning the actual fiscal and social impact of the challenged work expenses ceiling.

In a memorandum and order dated September 17, 1976, the district court upheld the constitutionality of the challenged authorities, over the dissent of Judge Weinstein. Appendix A. A judgment dismissing the complaint and denying appellants' motion for a permanent injunction was entered on September 20, 1976. Appendix B. This appeal followed.

THE QUESTION PRESENTED IS SUBSTANTIAL

The $80 work expense ceiling discriminates against the working poor in violation of the equal protection clause. It creates two classes among claimants of Home Relief: a) those who do not work at all and those who are employed incurring work expenses of $80 or less and b) those who are employed and incur actual work expenses in excess of $80 monthly. Home Relief provides persons in the former class with disposable income equal to the statutory subsistence standard by outright grants to the unemployed, and by supplementing the net income of employed claimants after fully recognizing all work expenses. Persons in the latter class, though identically situated, receive either no benefits at all or supplementary benefits diminished by the amount that their work expenses exceed $80. They are left

with disposable incomes below the statutory subsistence standard.

A hypothetical example readily illustrates the mechanics of the discrimination. Four families of five people in New York City each paying $200 in rent apply for Home Relief. The statutory subsistence level for each family is $518. 18 NYCRR §§352.1, 352.3. No one in Family A works. They receive a Home Relief grant of $518. One person in Family B works earning a gross monthly salary of $550 and incurring $80 in work expenses. Family B receives a $48 Home Relief grant providing them $518 in disposable income. One person in family C also earns $550 but incurs $95 in work expenses. The work expense ceiling results in family C receiving only a $48 supplement, and, hence, $15 less in disposable income than the $518 subsistence standard. One person in family D earns $600 gross and incurs $110 in work

expenses. Family D receives no Home Relief because the nonrecognition of its work expenses above $80 causes its net income to be recognized as $520, or $2 above the statutory standard. In reality family D's disposable income is only $490, $28 below subsistence. Because it is in-eligible for Home Relief, family D is in-eligible for the automatic Medicaid coverage afforded to all Home Relief recipients, although they have the least disposable income of the four.

I. The District Court Disregarded This Court's Consistent Holding That the Rational Basis Standard Requires Governmental Cost Savings To Be Effected On A Principled Basis

"Our society respects honest work for pay. The work ethic is fundamental in our culture." Dissent, (A-11.) Nevertheless, in this case where a welfare statute discriminates against the working poor, the

rational basis standard of equal protection is applicable. Dandridge v. Williams, 397 U.S. 471, 485 (1970); Jefferson v. Hackney, 406 U.S. 535, 546 (1972). However, the challenged statute cannot withstand scrutiny under this standard, which affords states wide latitude, since it is not rationally related to any legitimate governmental interest. No state of facts reasonably may be conceived to justify it.

The majority below held:

> We need look no further than the legitimate desire on the part of the State to conserve limited public resources in order to find a rational basis for the $80 limit on deductions. (A-8).

This Court, however, has consistently held that a State's interest in minimizing expenditures alone will not sustain an otherwise invidious discrimination. Graham v. Richardson, 403 U.S. 365, 374 (1971); Shapiro v. Thompson, 394 U.S. 618, 633 (1969). Recently in City of New

Orleans v. Dukes, 96 S. Ct. 2513, 2517 (1976) the court reaffirmed that a discrimination is invidious not only if "it trammels fundamental personal rights or is drawn upon inherently suspect distinctions..." but, as in the instant case, constitutes "a wholly arbitrary act." Under the "rational basis" standard governmental cost savings must be effected on a principled basis. James v. Strange, 407 U.S. 128, 140 (1972). This standard "imposes a requirement of some rationality in the nature of the class singled out" to bear the burden of reduced expenditures. Rinaldi v. Yeager, 384 U.S. 305, 309 (1966). Disregarding this consistent line of precedent, the majority below "look[ed] no further" than purported cost savings, (A-8), and failed to inquire whether there is any rationality whatever in the nature of the class singled out to bear the burden.

The majority cited Dandridge v.

Williams, supra and Jefferson v. Hackney, supra as precedent for this clearly erroneous test. (A-8). In Dandridge, the Court did not sustain Maryland's welfare benefit ceiling because of its obvious tendency to limit State expenditures, rather the Court stated:

> It is enough that a solid foundation for the regulation can be found in the State's legitimate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor. 397 U.S. at 486. (Emphasis supplied.)

The majority below also misread Jefferson v. Hackney, supra, where this Court examined the nature of the class Texas designated to receive reduced welfare benefits and found the required rational basis. The Court stated:

> Since budgetary constraints do not allow the payment of the full standard of need for all welfare recipients, the State may have concluded that the aged and infirm are the least able of

> the categorical grant recipients to bear the hardships of an inadequate standard of living.... it is not irrational for the State to believe that the young are more adaptable than the sick and elderly,...." 406 U.S. at 549.

Neither the majority below nor the appellees contended that the appellants' class had any attribute which suited them to living on less than the subsistence standard paid in outright grants to unemployed recipients otherwise identically situated. Contrasting appellant's situation to Jefferson, the dissent below observed that:

> The members of the plaintiff class share no comparable attributes differentiating them from the favored Home Relief recipients. In this sense, the classification here is as arbitrary as a reduction of benefits for every third recipient on the welfare rolls. (A-21.)

James v. Strange, supra and Rinaldi v. Yeager, supra explicitly state the requirement of rationality in the nature

of a class singled out to bear the burden of cost savings. Applying the "rational basis" standard in these cases, this Court invalidated statutes which admittedly furthered the States' fiscal interests. In Rinaldi the Court said:

> ...legislation may impose special burdens upon defined classes in order to achieve permissible ends. But the equal protection clause does require that in defining a class subject to legislation, the distinctions that are drawn have some relevance to the purpose for which the classification is made. 384 U.S. at 309.

The majority below also relied on the doctrine of Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955), that a State may take one step at a time in addressing a social problem. However, New York engrafted the work expenses ceiling onto a Home Relief program which had previously permitted full deduction of necessary work expenses in determining eligibility and payment. Noting these

facts, the dissent concluded that "'the proposition that reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind,' is irrelevant to the question presented here." Dissent, (A-21, 22), quoting from Williamson v. Lee Optical Co., supra. Furthermore, this step backward in recognizing work expenses and encouraging employment was left intact while the State twice raised the statewide welfare payment level guaranteed to all other Home Relief claimants.[5]

Having determined that the goal of the challenged work expenses ceiling was cost savings, the majority below simply failed to inquire whether there was any rationality in singling out needy working poor families incurring over $80 monthly

[5] Laws 1973, chap. 150, §1, eff. Jan. 1, 1974; Laws 1974, chap. 1080, §11, eff. June 15, 1974.

work expenses to bear the singular burden of living on less than the subsistence standard, paid by the State to non-working recipients.[6]

II. The Work Expenses Ceiling Is Not Rationally Related To Any Conceivable Objective Of Welfare Policy

Since the majority below sustained the challenged statute solely because of its purported cost saving effect, they deemed it unnecessary to consider whether the statute bears rational relation to any other legitimate state interest. (A-8.) It does not.

The challenged work expense ceiling is obviously antithetical to the State's

[6] Appellants' heavily documented claim that the present $80 work expense ceiling does not reflect the average expenses of a full-time worker whose family is otherwise eligible for Home Relief, was accepted by the dissenting judge. (A-17). See also discussion at pages 27-28, *infra*. Appellants' class encompasses a majority of the working poor families in New York, i.e., families poorer than those who are totally supported by welfare.

"legimitate interest in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor," which sustained the law in Dandridge v. Williams, supra at 486. Since the work expenses ceiling deprives workers of the level of income provided as outright Home Relief grants to non-workers, it obviously acts as a strong work disincentive. Workers incurring less than $80 monthly work expenses are discouraged from increasing earnings. Not only are additional earnings deducted dollar for dollar from the supplementary Home Relief payment, but work expenses above $80 are not recognized. The incremental earned dollar which cuases work expenses to exceed $80, because of mandatory Social Security and income taxation, reduces the Home Relief grant by more than a dollar. The more one earns, the less one's family has until they are completely

ineligible and also lose their valuable Medicaid coverage. Note 4, supra.

While the dissent below found that the objectives sustaining the Maryland statute "are defeated by the classification challenged here", (A-21), the majority below held that overwhelming evidence that the expense ceiling discourages work and contributes to family disintegration was "not relevant to our analysis." (A-6.) These natural and direct consequences of the work expense ceiling which defeat the avowed purposes of the Home Relief program to encourage employment, Social Services Law §§131-5, 131-7, 157, 159-a, and 164, and maintain and strengthen the family unit, Social Services Law §131-3, were characterized as "side effects of legislation." (A-6.)[7]

[7] In its order of November 26, 1975 the district court formally requested the parties to submit statistical studies bearing on appellants' contentions that the work expense ceiling caused the abandonment of work and family, resulting in increased welfare costs. See page 13, supra. Appellees did not provide any statistical

The appellee State agency was fully aware that the work expense ceiling discouraged work and encouraged fathers to desert intact families. A memorandum from Felix Infausto Deputy Commissioner of the appellee State agency, to the New York Legislature in support of the bill which became the challenged statute stated:

> "....Home Relief recipients often find that by working, even with the availability of the $60 work related exemption, <u>they end up with less money to meet their basic needs than they would if they didn't work</u>. Similarly, working families receiving Home Relief often find it more advantageous for the father to desert the family and not report his income with that of the household than to remain in the family and remain working. (Emphasis added)

and further stated.

> Recent studies have shown that work-related expenses average $75 per month and that working persons often incur $100 or more per month in necessary work related expenses.

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information in response to the court's request. Appellants' response is adopted in the dissent at A-24- A-39.

Memorandum from Felix Infausto, Deputy Commissioner, New York State Department of Social Services, to the New York State Legislature in Support of Assembly Bill No. 11310. (A-17.)

The "recent" study referred to in this 1974 memorandum was an August 1971 analysis of 560 Home Relief families. New York State Department of Social Services, 1971 Home Relief Study - August 1971, Work Related Expenses - Home Relief (October 26, 1971.) Since the date of the study there has been a 51.7% increase in the cost of living,[8] including many of the items constituting work related expenses. The rates of Social Security, State, and New York City taxation have all been increased. New York City's transit fare has increased 43%. Even in August 1971, the average work expense in

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8. U.S. Dept. of Labor, New York - Northeastern New Jersey, Consumer Price Index For Urban Wage Earners and Clerical Workers, Aug. 1971 - Sept. 1976. Base year 1967.

New York's three largest suburban counties, Nassau, Suffolk, and Westchester was $110.13, more than $30 greater than the expense ceiling employed 5 years later. Appellees refused the Court's invitation to submit current statistics, and the dissent concluded that "it is doubtful that the present $80 figure accurately reflects the work-related expenses of the average New York worker otherwise eligible for Home Relief."[9]

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9. The partial monthly work expenses of a New York City worker heading a family of four and earning $125.00 per week are $109.24. Included are federal, State, and City income tax, Social Security Tax, New York State's compulsory disability assessment, lunch of $1.00 per day, and transportation in a <u>one</u> fare zone. <u>Not included</u> are costs of union dues, tools, uniforms, licenses, group insurance, permits, and child care, which are all defined as necessary work expenses. 18 NYCRR §352.19(a). A family with this income and rental costs within allowable welfare limits has disposable income less than the State's welfare subsistence standard. 18 NYCRR §§352.2 and 352.3.

In assessing the economic impact of the expense ceiling, appellees did not take into account the added expenditures which result from the abandonment of work and family. Appellants are mindful of this Court's admonition that its reviewing function under the equal protection clause "is not to weigh this statutes effectiveness, but its constitutionality" James v. Strange, supra at 133, and its recent pronouncement that a "...State is not compelled to verify logical assumptions with statistical evidence." Hughes v. Alexandria Scrap Corp., 96 S. Ct. 2488, 2498 (1976). However, logic suggests that a statute which deprives workers of the level of income provided as a welfare payment to the unemployed, will discourage work and increase welfare costs. This logical assumption prompted Congress to require full work expense deduction in the

AFDC program.[10] 42 USC §602(a)(7).

In addition to providing a detailed analysis of the work disincentives implicit in the expense ceiling, (A-24- A-35), Judge Weinstein's dissent summarizes the overwhelming evidence indicating that the work expenses ceiling actually increases welfare expenditures. (A-38, A-24- A-39.) The dissent also reviews

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10. "The committee believes that it is only reasonable for the States to take these expenses fully into account. Under existing law if these work expenses are not considered in determining need, they have the effect of providing a disincentive to working since that portion of the family budget spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter." S. Rep. No. 1589, 87th Cong., 2d Sess., 17-18 (1962), U.S. Code Cong. & Admin. News, pp. 1959, 1960. See also H.R. Rep. No. 1414, 87th Cong., 2d Sess., 23 (1962), containing virtually identical language.

appellants' irrefutable showing that the statute is either antithetical or irrelevant to every other objective of welfare policy.

1. Reduction of Poverty

There is no dispute that because of the challenged classification appellants' class is forced to live on less income than the legislatively fixed statewide subsistence standard, and that all other Home Relief claimants are provided with at least this subsistence standard of living. (A-5, A-11.)

2. Administrative Efficiency

The $80 figure is a ceiling, not a flat deduction, and the administering Social Services worker must still compute the actual amount of work expenses in each case. 18 NYCRR §352.19. Dissent, (A-23.) There is no gain in administrative efficiency.

3. Family Stability

Unemployed intact Home Relief families and single parent AFDC families in New York receive identical welfare payments. However, working Home Relief families are at a severe disadvantage in comparison with working AFDC families, because the Federal-State AFDC program requires full work expense deductibility, 42 USC §602(a)(7); Shea v. Vialpando, 416 U.S. 251 (1974), and an earnings disregard. 42 USC §602(a)(8); Engelman v. Amos, 404 U.S. 23 (1971). More importantly, the challenged work expenses ceiling causes working intact families with lower than subsistence income, like the Roundtrees, to be totally ineligible for Home Relief supplementation. In the words of the Assistant Commissioner of the appellee State agency "...working families receiving Home Relief often find it more advantageous for the father to desert the

family and not report his income with that of the household than to remain in the family and remain working." See page 26, <u>supra</u>. There is unanimity among the commentators that New York's unequal treatment of the earnings of intact families promotes family disintegration. A detailed analysis is provided in the dissent. (A-35- A-37.) Judge Weinstein concluded that

> Joined with other discriminations against poor, two parent families, all contributing to the destruction of family life, the impact of the welfare provision in issue verges on the <u>absurd</u>. (A-11). (Emphasis added).

4. <u>Reduction of Work Expenses</u>

Most of the expenses defined as "necessary" in 18 NYCRR §352.19(a) are totally involuntary. Appellant Roundtree's involuntary expenses are $88.66. These alone exceed the work expense ceiling. The only option open to a worker seeking

to lower income and Social Security taxation is to earn less. Many other costs such as union dues, permits, licenses, and disability insurance are also fixed.

> If New York had been interested in eliminating unnecessary work expenses, it could have applied individual ceilings to the few items subject to employee control (as is presently the case with meals.) That the Statute applies to all items, including involuntary payroll deductions, unmistakably stamps it as a _wholly_ _arbitrary_ means of reducing benefits. _Dissent_, (A-39). (Emphasis added)

III. Work Expenses Ceilings And Other Welfare Provisions Which Force The Working Poor To Live On Less Income Than Welfare Recipients Have Been Consistently Invalidated By The Courts

This Court invalidated Colorado's AFDC work expenses ceiling in _Shea v. Vialpando_, _supra_. The Court concisely summarized the policy behind permitting the full deduction of reasonable work expenses:

> Such expenses reduce the level of actually available income, and if not deducted from gross income will not produce a corresponding increase in AFDC assistance. Failing to allow the deduction of reasonable expenses might well discourage the applicant from seeking or retaining employment whereby such expenses are incurred. 416 U.S. at 264.

Colorado authorized full deduction of involuntary payroll deductions, applying its expense ceiling to additional work related expenses such as transportation and special clothing costs. The Colorado provision was less arbitrary and burdensome than New York's which subjects completely involuntary work expenses to the $80 ceiling. Appellant Roundtree's mandatory payroll deductions alone exceed the ceiling. However, in Shea the Court held that even Colorado's partial ceiling violated 42 USC §602(a)(7). Thus, the Court has neither been squarely presented with an equal protection challenge to a

welfare work expense ceiling nor reviewed a "wholly arbitrary" provision such as New York's (A-39).[11]

Two three-judge district courts have invalidated provisions similar to New York's work expense ceiling on equal protection grounds. In Hein v. Burns, 402 F.Supp. 398 (S.D. Iowa, three-judge court, 1975), prob. juris. noted, sub. nom. Burns v. Hein, 96 S. Ct. 2223 (1976), the Court invalidated a regulation which reduced food stamp benefits by counting as available income, monies actually expended for transportation costs. Applying "rational basis" scrutiny the Court held:

> The travel allowance in question, being necessarily used to defray commuting expenses, clearly bears no relationship to the recipient's ability to provide

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11. Welfare work expense ceilings have often been the subject of litigation. See Shea v. Vialpando, supra at 255, note 3.

> an adequate nutritional level or to stimulate the agricultural economy ... The challenged classification ... effects a class in contravention of basic principles of equal protection. 402 F.Supp. at 406, 407.

In Hein monies actually expended for transportation, and in the instant case work expenses, are irrationally counted as income available to feed a family.

In Anderson v. Burson, 300 F.Supp. 401 (D. Ga., three-judge court, 1968) the Court invalidated a Georgia regulation denying welfare supplementation to full time workers, regardless of their acknowledged need, stating:

> "although plaintiffs are as needy as other recipients of assistance who also have income, the regulation operates to the financial disadvantage of plaintiffs on the basis of the source of their income and the character of their employment; namely, earned income derived from full-time employment, a basis which bears no reasonable relationship to plaintiffs'

> financial needs... 300 F.Supp at 404.

Finally in Aitchison v. Berger, 404 F.Supp 1137 (S.D.N.Y. 1975, aff'd ____ F.2d ____ (2d Cir. Feb. 13, 1976), cert. den. 45 U.S. L.W. 3280 (Oct. 12, 1976), the district court invalidated a New York Medicaid regulation which required a working mother to "spend-down" below New York's statewide subsistence level before her family received the Medicaid benefits afforded to all New York welfare recipients, who receive at least the subsistence level of income. Judge Frankel stated:

> To discriminate against the self-supporting by requiring them to live on income below the level declared by New York to be necessary for minimal maintenance would do violence to the aims of the Medicaid legislation and common sense. 404 F.Supp. at 1149.

The State has broad discretion in the field of welfare legislation and

federal courts have been reluctant to enforce the standard of "minimum rationality" against State legislatures. "Yet unless that doctrine is dead in all but such strict scrutiny cases as those involving race, this case warrants its application." Dissent, (A-12).

CONCLUSION

This appeal rasises an issue of fundamental importance. If a state may deny the working poor a level of income it pays in welfare benefits to the unemployed, the American ideal of honest work for pay is seriously damaged. The issue should be considered by the Court at this time.

Respectfully submitted,

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APPENDIX A

Levan ROUNDTREE and Delores Roundtree, Individually, on behalf of their minor children and all other persons similarly situated, Plaintiffs,

and

John Folsom et al.

v.

Stephen BERGER, Individually and as Acting Commissioner of the New York State Department of Social Services, et al., Defendants.

No. 75-C-1052.

United States District Court,
E. D. New York.

Sept. 17, 1976.

Class action was brought to challenge as unconstitutional a provision of the New York Social Services Law which placed a limit of $80 on the amount which could be deducted from gross salary for work-related expenses for the purpose of determining eligibility for cash assistance under a state funded program. The Three-Judge Court, Costantino, J., held that the statutory limitation on deductions for work-related expenses was not patently arbitrary nor utterly lacking in rational justification and that, therefore, it did not violate the Constitution.

Motion denied and complaint dismissed.

Weinstein, J., dissented and filed opinion.

1. Constitutional Law ⟹208(3)

Class of those working poor who have

more than $80 a month in work expenses does not constitute a "suspect class" and, therefore, provision of New York public assistance law which placed limit of $80 per month on amount deductible from gross salary for work-related expenses, for purpose of determining eligibility for cash assistance, was subject to examination under the rational basis standard which requires that the state classification be sustained unless it is patently arbitrary and bears no rational relationship to a legitimate governmental interest. Social Services Law N.Y. §§ 131–a, subd. 2, 131–i; U.S.C.A.Const. Amend. 14.

See publication Words and Phrases for other judicial constructions and definitions.

2. Constitutional Law ⚩48(6)

So long as a state legislative classification bears a rational relationship to a legitimate governmental interest, the constitutionality of the statute's discrimination will be presumed unless the statute trammels fundamental personal rights or is drawn upon inherently suspect distinctions. U.S.C.A.Const. Amend. 14.

3. Constitutional Law ⚩70.1(1)

Absent invidious discrimination, it is not the function of the judiciary to weigh or balance the side effects of legislation against the legitimate purpose sought to be achieved by the legislature. U.S.C.A.Const. Amend. 14.

4. Constitutional Law ⚩209

It is entirely consistent with equal protection clause for a state to take one step at a time, addressing itself to that phase of a problem which seems most acute to the legislature, even if to do so means that other phases of problem are neglected. U.S.C.A.Const. Amend. 14.

5. **Constitutional Law ⟹242.3(1)**

Social Security and Public Welfare ⟹1

Legitimate desire on the part of the state to conserve limited public resources constituted a sufficient rational basis for provision of New York Social Services Law which placed $80 maximum on amount deductible from gross salary for work-related expenses, for purpose of determining eligibility for cash assistance to bring earned household income up to standard of need, and, therefore, $80 limit did not violate the equal protection clause. Social Services Law N.Y. §§ 131–a, subd. 2, 131–i; U.S.C.A.Const. Amend. 14.

6. **Constitutional Law ⟹92**

A noncontractual claim to receive funds from the public treasury is not constitutionally protected. U.S.C.A.Const. Amend. 14.

7. **Constitutional Law ⟹253(2)**

In evaluating a social welfare program, the due process clause interposes a bar only if the challenged statute manifests a patently arbitrary classification which is utterly lacking in rational justification. U.S.C.A.Const. Amend. 14.

8. **Constitutional Law ⟹253(2)**

Social Security and Public Welfare ⟹1

Provision of New York Social Services Law which placed limit of $80 on the amount deductible from gross salary for work-related expenses, for purpose of determining eligibility for cash assistance to bring net household earned income up to standard of need, did not violate the due process clause by creating an arbitrary or otherwise prohibited presumption that money actually spent on work expenses in excess of $80 per month is available to meet other needs. Social Services Law N.Y. §§ 131–a, subd. 2, 131–i; U.S.C.A.Const. Amend. 14.

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Before MESKILL, Circuit Judge, and WEINSTEIN and COSTANTINO, District Judges.

MEMORANDUM and ORDER

COSTANTINO, District Judge.

In this action, plaintiffs seek (1) a declaratory judgment voiding New York State Social Services Law § 131–i and 18 N.Y.C. R.R. § 325.19(c) as unconstitutional, and (2) an injunction restraining defendants from enforcing the provisions of these sections.

Both provisions are part of New York State's Home Relief Program. The program is completely state funded and provides cash assistance to persons who are ineligible for federally funded programs. Under the program, a standard of monthly need is determined according to the number of persons in a household. Social Services Law § 131–a(2).

If no member of the household is employed, the household receives a grant equal to the standard of need. If a member of the household is employed the household receives a cash allowance to supplement the earnings. The allowance is equal to the difference between the standard of need and the net earned income of the household after deduction of work-related expenses.

These expenses include (1) all non-personal work expenses such as union dues, costs of tools, materials, uniforms and other special clothing; (2) all personal work expenses such as Federal, State and local taxes, group insurance, meals and transportation; and (3) an allowance of $20 per month as a "special work expense." However, under the provisions challenged in this lawsuit (Social Services Law § 131–; and 18 N.Y.C. R.R. § 352.19(c)) the maximum which can be deducted from gross salary for these work-related expenses is $80 per month.

The Roundtrees represent a class of people with work-related expenses of more than $80 whose net income would result in eligibility for home relief, but for the statutory relief. The Folsoms and Pelligrinos have work-related expenses of more than $80. While they are eligible for home relief aid, they receive "reduced" benefits because of the $80 limit. It is claimed that because of the $80 limit plaintiffs are denied equal protection and are deprived of their property rights without due process of law. We disagree.

Equal Protection

[1, 2] Although plaintiffs dispute the continuing viability of the "two-tiered" equal protection test, the Supreme Court has only recently re-affirmed its adherence to the traditional analysis. *Massachusetts Board of Retirement v. Murgia*, —— U.S. ——, 96 S.Ct. 2562, 49 L.Ed.2d —— (1976). Since the class of those working poor who have more than $80 a month in work expenses does not constitute a suspect class, we conclude that the state classification should be examined under the rational basis standard. This standard requires that the "legislative classification must be sustained unless it is 'patently arbitrary' and bears no

rational relationship to a legitimate governmental interest." *Frontiero v. Richardson,* 411 U.S. 677, 683, 93 S.Ct. 1764, 1768, 36 L.Ed.2d 583 (1973). So long as the classification does bear a rational relationship to a legitimate governmental interest, the constitutionality of the statute's discrimination will be presumed "unless [it] trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion or alienage." *City of New Orleans v. Dukes,* — U.S. —, 96 S.Ct. 2513, 2516, 49 L.Ed.2d — (1976).

Plaintiffs have introduced voluminous studies of related programs contending that these studies indicate that the maximum limit on work expenses set by New York State serves as a work disincentive and in fact contributes to family disintegration. These studies, however, are not relevant to our analysis. For, as plaintiffs themselves admit, "[t]he State is not bound to adopt a . . . scheme to encourage employment, it need not encourage employment at all. The State is not under an obligation to have a Home Relief program at all. . . . ." [1]

[3] In the absence of invidious discrimination it is not the function of the judiciary to weigh or balance the side effects of legislation (as plaintiffs would have us do here) against the legitimate purpose sought to be achieved by the legislature. *Cf. McGinnis v. Royster,* 410 U.S. 263, 93 S.Ct. 1055, 35 L.Ed.2d 282 (1973). To do so would mean the re-incarnation of a doctrine that

1. Plaintiffs' Supplementary Memorandum of Law In Support Of Motions For Preliminary Injunction, Formation of Three-Judge Court and Class Certification And In Opposition to Defendants' Berger And New York State Dep't of Social Services Motion To Dismiss, p. 25.

the Supreme Court laid to rest in *Dandridge v. Williams,* 397 U.S. 471, 484, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970): the doctrine that the Fourteenth Amendment gave the judiciary leave to strike down state laws which the court found to be "unwise, improvident, or out of harmony with a particular school of thought." *Williamson v. Lee Optical Co.,* 348 U.S. 483, 488, 75 S.Ct. 461, 464, 99 L.Ed. 563 (1955).

"So long as its judgments are rational, and not invidious, the legislature's efforts to tackle the problems of the poor and needy are not subject to a constitutional straitjacket. The very complexity of the problems suggest that there will be more than one constitutionally permissible method of solving them," *Jefferson v. Hackney,* 406 U.S. 535, 546–547, 92 S.Ct. 1724, 1731, 32 L.Ed.2d 285 (1972).

[4] Furthermore, it is entirely consistent with the Equal Protection Clause, for a state to "take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind" even if to do so means that other phases of the problem are neglected. *Williamson v. Lee Optical,* 348 U.S. 483, 489, 75 S.Ct. 461, 465, 99 L.Ed. 563 (1955).

Therefore, the sole question before this court is whether the classification adopted by the legislature bears a rational relationship to a legitimate governmental interest. *Frontiero v. Richardson, supra; Dandridge v. Williams, supra; Massachusetts Board of Retirement v. Murgia, supra; Geduldig v. Aiello,* 417 U.S. 484, 495, 94 S.Ct. 2485, 41 L.Ed.2d 256 (1974). "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan v. Maryland,* 366 U.S. 420, 426, 81 S.Ct. 1101, 1105, 6 L.Ed.2d 393 (1961); *Dandridge v. Williams, supra,* 397 U.S. at 485, 90 S.Ct. 1153.

[5] We need look no further than the legitimate desire on the part of the state to conserve limited public resources in order to find a rational basis for the $80 limit on deductions. *See Dandridge v. Williams, supra; Jefferson v. Hackney, supra; cf. Geduldig v. Aiello, supra; Hughes v. Alexandria Scrap,* — U.S. ——, 96 S.Ct. 2488, 49 L.Ed.2d 220 (1976). When the original limit of work-related expenses of $60 was raised to $80 in 1974, the additional cost to New York State was over $1 million dollars. The state could rationally have concluded that to eliminate the expense limitation completely or to raise it further, would result in larger expenditures of limited funds.

Plaintiffs have argued that because of the work disincentive built into the program, the state would actually save money by eliminating the expense limitation. This argument, however, is addressed to the wrong forum. "[T]he Constitution does not empower . . . [the] Court[s] to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." *Dandridge v. Williams, supra,* 397 U.S. at 487, 90 S.Ct. at 1163.

Due Process

Plaintiffs also challenge the statute on due process grounds, arguing that it creates a presumption that money actually spent on work expenses in excess of $80 per month is available to meet other needs. It is claimed that the presumption is arbitrary, capricious, erroneous and irrebuttable by its terms.

[6, 7] We do not agree that the limitation violates the Due Process Clause. In *Richardson v. Belcher,* 404 U.S. 78, 81, 92 S.Ct. 254, 257, 30 L.Ed.2d 231 (1971) the

Supreme Court concluded that a classification which "meets the test articulated in *Dandridge* is perforce consistent with the due process requirement of the Fifth Amendment." Since a non-contractual claim to receive funds from the public treasury is not constitutionally protected, *Weinberger v. Salfi,* 422 U.S. 749, 772, 95 S.Ct. 2457, 45 L.Ed.2d 522 (1975), in evaluating a social welfare program, "the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification." *Flemming v. Nestor,* 363 U.S. 603, 611, 80 S.Ct. 1367, 1373, 4 L.Ed.2d 1435 (1960).

[8] The limitation on work related expenses is not patently arbitrary nor utterly lacking in rational justification. The state makes no claim of allowing all deductions for work related expenses. Rather it has balanced the desire to provide incentives to work against use of the state's limited resources. The limit of $80 set by the legislature was apparently based to some extent upon a memorandum of the Deputy Commissioner of the New York State Department of Social Services which estimated average monthly work expenses at $75, although indicating that working persons often incurred more than $100 in work-related expenses. Whether or not we agree with the final decision of the legislature to place the maximum limitation for work expenses at $80, we must remain cognizant of the fact that "every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion, however, is a legislative, not a judicial function." *Village of Belle Terre v. Boraas,* 416 U.S. 1, 8, 94 S.Ct. 1536, 1541, 39 L.Ed.2d 797 (1973); *see Louisville Gas Co. v. Coleman,* 277 U.S. 32, 41, 48 S.Ct. 423, 72 L.Ed. 770 (Hughes, J., dissenting).

We think it appropriate to re-emphasize what the Supreme Court said in *Dandridge v. Williams:*

> We do not decide today that the . . . regulation is wise, that it best fulfills the relevant social and economic objectives that . . . . [the state] might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration, [citation omitted]. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. [citations omitted]

397 U.S. at 487, 90 S.Ct. at 1162. *Cf. Lavine v. Milne,* 424 U.S. 577, 96 S.Ct. 1010, 47 L.Ed.2d 249 (1976).

Since we conclude that New York State Social Services Law § 131–i and 18 N.Y.C. R.R. § 352.19(c) do not violate the Constitution, plaintiffs' motion for a permanent injunction is denied and the complaint is dismissed. The Clerk of the court is directed to enter judgment accordingly.

WEINSTEIN, District Judge (dissenting).

Our society respects honest work for pay. The work ethic is fundamental in our culture. Empirical studies demonstrate that able-bodied persons in all income brackets prefer work to relief. Government programs providing aid to some of those in need have been designed on the assumption that each recipient household will support itself to the extent possible. A law that strips people of their dignity by encouraging them to stop working in order to qualify for enough financial assistance to bring family income up to bare subsistence levels is inconsistent with fundamental policy. To put it plainly, it is irrational. Joined with other discriminations against poor, two-parent families, all contributing to the destruction of family life, the impact of the welfare provision in issue verges on the absurd.

At the heart of this case is the acknowledged fact that the working families in the plaintiff class have been forced to live on less than the statutorily defined minimum subsistence level of income which New York guarantees to its unemployed welfare recipients simply because their monthly job-related expenses exceed $80.00. The challenged statute—New York Social Services Law § 131-i—by limiting work expense deductions to $80 per month, requires plaintiffs to report to the administering welfare agencies net monthly incomes higher than their actual disposable incomes. Plaintiffs are consequently denied benefits for which they would otherwise be eligible under the provisions of New York's Home Relief program. New York Social Services Law §§ 157 *et seq.*

The work expense ceiling, enacted subsequent to the institution of the Home Relief program, effects an irrational, arbitrary

discrimination against the working poor violative of the Equal Protection Clause of the Fourteenth Amendment. This legislative afterthought simply grafts a set of gratuitous inequities onto a pre-existing welfare program, exacerbating the system's proven tendencies to discourage work initiative and to destroy family life.

We recognize that states do have wide discretion in the field of welfare legislation and that the reviewing authority of the federal courts is limited. *See, e.g., Dandridge v. Williams,* 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970). Federal courts, mindful of these restrictions, have been reluctant to enforce the standard of "minimum rationality" against state legislatures. *See, e.g., Tribe, Structural Due Process,* 10 Harv.Civil Rights L.Rev. 269, 272 (1975); Linde, Due Process of Lawmaking, 55 Neb. L.Rev. 197 (1976). Yet, unless that doctrine is dead in all but such strict scrutiny cases as those involving race, this case warrants its application. Financial savings alone cannot justify an unprincipled classification, serving no other legitimate state interest. Accordingly, for the reasons set forth below, I dissent.

I. Challenged State Provisions in Context

Plaintiffs' complaint is directed at one small feature of New York's Home Relief program, Social Services Law § 131–i, setting a limit on the deductibility of work expenses in calculating the income level of applicants.

Home Relief is New York State's residual public assistance program. It is intended to provide a subsistence level of income to those of the State's needy who are ineligible to participate in the categorical welfare programs such as Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI). *Id.* § 158.

Recipients of Home Relief are characteristically needy adults and children in two-parent families who are neither aged, blind, nor permanently and totally disabled. Comparably needy children in one-parent families are eligible for AFDC. *Id.* § 348 A & B. Needy aged, blind, or otherwise permanently and totally disabled persons are eligible for SSI pursuant to 42 U.S.C. §§ 1381 *et seq.* and New York Social Services Law §§ 209 *et seq.*

The amount of Home Relief paid to a recipient family equals the difference between its net monthly income from other sources and its prescribed level of need. "Need" is determined by adding the actual cost of shelter (within certain maximums related to family size) to an amount representing the uniform "statewide standard of need" for a family of specific size. Social Services Law § 131–a 2 sets forth the various standards which are applicable to both Home Relief and AFDC. The statewide standard of need represents the State legislature's determination of the subsistence level for all items, except shelter, needed by humans such as food, clothing, electricity, telephone, transportation, household goods, toiletries, school supplies, replacement furniture, books and other reading matter, and special allowances when appropriate in specific cases—*e. g.*, an allowance for meals taken in a restaurant when the aid recipient lacks cooking facilities or is physically unable to cook. *See, generally, Rosado v. Wyman*, 304 F.Supp. 1356, 1365 (E.D.N.Y. 1969), *vacated*, 414 F.2d 170 (2d Cir. 1969), *reversed in part*, 397 U.S. 397, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970).

Prior to June 14, 1972, applicable Social Service regulations, 18 NYCRR § 352.19 *et seq.*, authorized the deduction in full of all necessary work-related expenses from gross

income to determine both the financial eligibility of working applicants for supplementary Home Relief and the amount of such relief to be granted. Deductible expenses included so-called "personal work expenses", such as Federal, State, and local income taxes, Social Security and other payroll deductions, meals taken at work, and transportation, 18 NYCRR § 352.19(2); "non-personal work expenses", such as the cost of union dues, tools, uniforms, permits, and licenses, 18 NYCRR § 352.19(1); and a "special work expense" deduction of $20 a month to meet other additional or unforeseeable costs necessary and incident to employment, 18 NYCRR § 352.19(3). Expenses for all of these items were allowed in their actual amount except that, then as now, the allowances for lunch or dinner taken during the work day were fixed at maximums of $1.00 and $1.45 respectively. Assuming the existence of all other eligibility factors, a deficit between recognizable need and net available income, thus computed, rendered the family eligible for Home Relief. The amount of the deficit determined the amount of the grant. (Participants in a certified training program were and presently remain eligible for an additional $30 exemption per month, Social Services Law § 159–b.)

In 1971, the New York Legislature amended the Social Services Law by placing a $60 per month ceiling on the deduction of work-related expenses. Laws 1971, Chap. 746, § 2, eff. July 1, 1971. This ceiling was raised to the present $80 per month in 1974. Laws, 1974, Chap. 1059, § 1, eff. September 1, 1974. No changes have been made since then although we take judicial notice of the fact that the cost of living and, presumably, the cost of working having risen substantially in the interim. Such costs as union dues, transportation, tools and uniforms are likely to have risen over the past two years.

The limitation is presently codified as Social Services Law § 131-i, reading as follows:

> § 131-i. Expenses necessary and incident to employment; maximum allowances from earnings
>
> Whenever any applicant for or recipient of public assistance is employed, provision may be made for allowing appropriate amounts from his earnings for expenses necessary and incident to his employment, but in no case shall such allowance exceed eighty dollars per month unless required by federal law or regulation. The allowance provided herein shall not apply with respect to income earned by recipients of home relief in public work projects.

The implementing regulation, 18 NYCRR § 352.19(c), was amended to reflect the new $80.00 monthly ceiling on October 4, 1974, effective September 1, 1974. It now reads:

> (c) Work expenses in Home Relief cases. Notwithstanding the provisions contained in subdivisions (a) and (b) of this section, an allowance for all personal, non-personal and special work expenses necessary and incidental to employment shall in no case exceed $80 per month for an applicant for or recipient of home relief. The allowance provided herein shall not apply with respect to income earned by recipients of home relief in public work projects.

At present an applicant for or recipient of Home Relief with monthly work-related expenses in excess of $80 has only $80 deducted from earnings to compute net recognizable income. If this net income figure exceeds the statewide standard of need for the family size, the family is ruled ineligible for Home Relief. It is then denied the automatic full Medicaid coverage bestowed on all recipients of Home Relief. Social

Services Law § 366.

II. Impact on Plaintiffs

The work expense ceiling has had a harsh impact on the named plaintiffs. Levan Roundtree, a truck driver, is the sole source of support for his family of six. His gross monthly salary is $714.14; his monthly work-related expenses, consisting of Federal, State, and City income taxes, Social Security tax, New York State Disability Insurance, union dues, transportation, lunch, and work clothing amount to $156.66. Because only $80 in expenses could be deducted, Roundtree's application for supplemental Home Relief was denied. But, when monthly mortgage payments, property taxes, and carrying charges on their home are deducted, the Roundtrees are left with $250.48 in monthly available income, only 68% of the $368.00 welfare subsistence level for a family of six. The Roundtrees are also, unlike those receiving welfare payments, ineligible for Medicaid coverage (Social Services Law § 366 1(a)(1), 2(a)(8)(ii))—which may have a value of thousands of dollars a year.

Similarly, the Pelligrinos, a family of nine, must subsist on a monthly income, after rent, of $485.34—$32 66 below the statewide standard—because Mr. Pelligrino, a mason's helper for a construction company, incurs $112.67 in work expenses ($69.33 in involuntary payroll deductions and $21.67 for transportation and lunch). The Folsoms, a family of seven, experience a $23.56 subsistence deficit because Mr. Folsom, a janitor, incurs $103.56 in monthly work expenses. Included are $64.06 in involuntary payroll deductions, despite the fact that because of his low income and number of dependents Mr. Folsom pays no federal income tax.

Data available to the court suggests that the work-related expenses of these families are typical. A 1972 study of the New York welfare system, using 1971 tax schedules and typical 1970 union dues, shows that the work expenses for the head of a four-person household working 40 hours a week at $2 per hour were even then as high as $800 annually, or $67 per month. See B. Bernstein, A. N. Shkuda, M. Burns, "Income-Tested Social Benefits in New York: Adequacy, Incentive, and Equity," in Studies in Public Welfare, Paper No. 8 prepared for the Subcommittee on Fiscal Policy Joint Economic Committee 19 (Washington, D.C.: Government Printing Office, July 8, 1973). This figure, which increases as income rises, does not reflect many expenses recognized by 18 NYCRR § 352.19, such as tools, materials, fees, and license payments.

A study of 560 families then receiving Home Relief in 1971 showed that work-related expenses averaged $75 per month and that "working persons often incur $100 or more per month in necessary work-related expenses." Memorandum from Felix Infausto, Deputy Commissioner, New York State Department of Social Services, to the State Legislature in Support of Assembly, Bill No. 11310, Appendix A to Plaintiffs' Memorandum of Law in Support of Their Motion for a Preliminary Injunction. Given inflation and the increases since 1971 in both mass transit fares and State, City and Social Security taxes, it is doubtful that the present $80 figure accurately reflects the work-related expenses of the average New York worker otherwise eligible for Home Relief.

Much of what follows elaborates the extent to which present laws disadvantage plaintiffs and their class relative to those receiving higher benefits. Nothing said below should be taken as suggesting that welfare recipients lead lives of idle affluence.

We take judicial notice, based on many civil and criminal cases tried in this court involving poor people, that only a small percentage of those on welfare receive the high benefits that would result from the addition of all theoretically available programs. Recipients of welfare assistance are generally economically and otherwise deprived.

III. Equal Protection

The imposition of a ceiling on monthly work-related expenses has created new inequities in the treatment of Home Relief applicants and recipients. In effect, the statute now distinguishes (1) claimants who are employed and incur work expenses of more than $80 monthly from (2) those who are employed and incur monthly work expenses of $80 or less and those who are unemployed. Persons in the latter class are guaranteed a disposable monthly income—*i. e.*, income after deduction of work-related expenses—equal to the statutory subsistence standard. Persons in the former class—though in all relevant respects identically situated—receive diminished benefits or no benefits at all and are thus left with disposable monthly incomes below the statutory standard.

Hypothetical examples readily illustrate the mechanics of the discrimination. Assume that four two-parent, five-member families are each paying $200 in rent. The recognized monthly "need" for each family would be $518. If no one works in family A, it will receive $518 in Home Relief. If one person works in family B, earning a gross monthly salary of $550 and incurring $80 in work expenses, B will receive a $48 Home Relief grant, giving it $518 in monthly disposable income. If, however, one person in family C incurs $95 in monthly work expenses while earning the identical $550 in gross income, the $80 work expense ceiling

will result in C's receiving the same $48 supplement and, hence, $15 less in monthly disposable income. Finally, if one person in family D earns $600 gross, but incurs $110 in monthly work expenses, D will receive no Home Relief since the $80 ceiling will cause its monthly net disposable income level to be recognized as $520 per month, or $2 above the statutory standard. In reality, though, D's disposable income is $490, a full $28 below the standard. Ironically, family D, because it is ineligible for Home Relief, is the only family ineligible for full Medicaid benefits—even though in real terms it is the neediest of the four. Social Services Law § 366 1(a)(1), 2(a)(8)(ii).

It is axiomatic that the Equal Protection Clause of the Fourteenth Amendment requires some rational justification for legislative discrimination. Under traditional equal protection principles, a state retains broad discretion to classify—particularly in the area of economics and social welfare—provided its classification has "a reasonable basis." *See, e. g., Graham v. Richardson,* 403 U.S. 365, 371, 91 S.Ct. 1848, 1852, 29 L.Ed.2d 534 (1971); *Dandridge v. Williams,* 397 U.S. 471, 485, 90 S.Ct. 1153, 1161–62, 25 L.Ed.2d 491 (1970); *McGowan v. Maryland,* 366 U.S. 420, 425–27, 81 S.Ct. 1101, 1106, 6 L.Ed.2d 393 (1961); *Williamson v. Lee Optical Co.,* 348 U.S. 483, 489, 75 S.Ct. 461, 465, 99 L.Ed. 563 (1955). "[A]s in all equal protection cases, ... the crucial question is whether there is an appropriate governmental interest suitably furthered by the differential treatment." *Police Department of Chicago v. Mosley,* 408 U.S. 92, 95, 92 S.Ct. 2286, 2290, 33 L.Ed.2d 212 (1972). "[A] State cannot achieve its objectives by totally arbitrary means; the criterion for differing treatment must bear some relevance to the object of the legislation." *Bullock v. Carter,* 405 U.S. 134, 145, 92 S.Ct. 849, 857, 31 L.Ed.2d 92 (1972).

Budgetary considerations, standing alone, do not afford a constitutionally sufficient justification for legislative discrimination which disadvantages a single group. *See Graham v. Richardson*, 403 U.S. 365, 372–76, 91 S.Ct. 1848, 1852–53, 29 L.Ed.2d 534 (1971); *Shapiro v. Thompson*, 394 U.S. 618, 631, 89 S.Ct. 1322, 1330, 22 L.Ed.2d 600 (1969); *see also Bullock v. Carter*, 405 U.S. 134, 149, 92 S.Ct. 849, 858, 31 L.Ed.2d 92 (1972); *Rinaldi v. Yeager*, 384 U.S. 305, 86 S.Ct. 1497, 16 L.Ed.2d 577 (1966). In *Shapiro*, the Court specifically noted that the saving of welfare costs cannot justify an invidious classification. It said:

> We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification.

394 U.S. at 631, 89 S.Ct. at 1330.

Although in recent welfare cases the Court has spoken sympathetically of state needs to preserve limited fiscal resources, it has consistently recognized the constitutional requirement that cost savings be effectuated on a principled basis. Thus, in *Dandridge v. Williams, supra*, applying a limited rational relationship test, it looked to policy objectives beyond fiscal considerations in upholding Maryland's challenged AFDC benefit ceiling—specifically, the

State's interests "in encouraging employment and in avoiding discrimination between welfare families and the families of the working poor." 397 U.S. at 486, 90 S.Ct. at 1162. As indicated below, both these objectives are defeated by the classification challenged here. *Cf. Hughes v. Alexandria Scrap*, — U.S. —, 96 S.Ct. 2488, 49 L.Ed.2d 220 (1976) (Maryland, in preserving limited funds available for program paying bounties to scrap-processors for destroying abandoned automobiles may constitutionally impose additional documentation requirements on out-of-state processors only since that discrimination is rationally related to the basic statutory purpose of cleaning Maryland's landscape of abandoned automobiles).

Similarly, in *Jefferson v. Hackney*, 406 U.S. 535, 549, 92 S.Ct. 1724, 1733, 32 L.Ed.2d 285 (1972), Texas' decision to reduce its AFDC standard of need by a greater percentage than it reduced the standard used in its other federally aided categorical assistance programs was upheld as furthering its legitimate interest in maximizing the effectiveness of its fixed pool of welfare funds. The Court observed that:

> The State may have concluded that the aged and infirm are the least able of the categorical grant recipients to bear the hardships of an inadequate standard of living. . . . [and] that the young are more adaptable than the sick and elderly . . . .

The members of the plaintiff class share no comparable attributes differentiating them from the favored Home Relief recipients. In this sense, the classification here is as arbitrary as a reduction of benefits for every third recipient on the welfare rolls.

It should be emphasized that New York singled out plaintiffs' sub-class to bear the burden of reduced benefits after its initial

Home Relief program had treated all recipients equally. This case is strikingly different from those in which state benefit programs have been upheld against charges of under-inclusiveness in their original design. *Cf. Geduldig v. Aiello*, 417 U.S. 484, 94 S.Ct. 2485, 41 L.Ed.2d 256 (1974). The proposition that "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind", *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489, 75 S.Ct. 461, 465, 99 L.Ed. 563 (1955), is irrelevant to the question presented here. *See also, Katzenbach v. Morgan*, 384 U.S. 641, 656–57, 86 S.Ct. 1717, 1726–27, 16 L.Ed.2d 828 (1966).

New York may reduce benefit levels across the board on an equal percentage basis. *See* New York Laws 1971, Ch. 133, § 2, eff. May 1, 1971 (reducing benefits to 90% of the statewide standard of need); *Rosado v. Wyman*, 397 U.S. 397, 90 S.Ct. 1207, 25 L.Ed.2d 442 (1970). But the validity of its decision to place the entire burden of cost savings on a narrowly defined subgroup turns on whether that classification reflects some rationale beyond the mere reduction of program costs. *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969); *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970).

Our inquiry is, admittedly, limited, for as the Court noted in *Dandridge*, "[a] statutory discrimination will not be set aside if any state of facts reasonable may be conceived to justify it." 397 U.S. at 485, 90 S.Ct. at 1161. *But see Green v. Waterford Board of Education*, 473 F.2d 629, 633 (2d Cir. 1973) (noting trend in recent Supreme Court decisions toward more rigorous application of rational relationship test). Any assessment of the impact of this statute, taking into account the practical realities of life on

welfare, the overall structure of the various programs, and the findings of experts, demonstrates that the work expense ceiling is at best irrelevant to, and at worst destructive of, the fundamental objectives of welfare policy.

IV. Policy Objectives

We may posit several possible objectives supporting any given change in the welfare law: (A) reduction of poverty; (B) elimination of horizontal inequities—particularly as between the working poor and unemployed recipients; (C) promotion of administrative efficiency; (D) encouraging recipients to increase income through employment; (E) strengthening the family ties of program participants; and (F) reduction of program costs. *See, e. g., Dandridge v. Williams*, 397 U.S. 471, 486, 90 S.Ct. 1153, 1162, 25 L.Ed.2d 491 (1970); *Shapiro v. Thompson*, 394 U.S. 618, 633–38, 89 S.Ct. 1322, 1331–33, 22 L.Ed.2d 600 (1970). The challenged provision contributes nothing to the advancement of such goals.

A, B, and C. Reduction of Poverty, Inequalities, and Administrative Inefficiency.

The work expense ceiling does nothing to ease the pressure of poverty. As indicated below, it increases the inequities within the Home Relief program. There is certainly no reason to assume that those whose work-related expenses happen to exceed $80 are better suited than other Home Relief recipients to living on monthly incomes below the subsistence standard. Similarly, there is no gain in administrative efficiency since the $80 figure is only a ceiling and the administering social services worker must still compute the actual amount of work expenses in each case. 18 NYCRR § 352.19 *et seq.* The same procedures would be followed if actual work expenses were fully deductible.

D. Work Incentives.

(1) Home Relief Program

The Home Relief program is a guaranteed income plan. Each reported dollar earned below the statutory standard of need results in the loss of a dollar in benefits. There is no economic incentive for an unemployed Home Relief recipient to accept paid employment since it affords no net gain in retained income. Thus the "benefit-loss rate" or "tax" on net earned income would be 100%.

For the members of the plaintiff class, acceptance of paid employment results in a net decrease in disposable income because the loss of benefits is not adjusted to reflect all the income that is lost in the form of work expenses. The benefit-loss rate for plaintiffs is thus greater than 100%. Some employed Home Relief recipients have a strong incentive to reduce earnings or avoid increases in salary since resulting increases in income-related work expenses—such as income and Social Security taxes—may generate net decreases in disposable income. Losses from related welfare programs—typically medical assistance, food stamps, and school lunches—can substantially enhance the disincentives to work.

Those generalizations are supported by studies of the operation of the New York welfare system. *See, e. g.*, B. Bernstein, N. Shkuda, M. Burns, "Income-Tested Social Benefits in New York: Adequacy, Incentive, and Equity," in Studies in Public Welfare, Paper No. 8 prepared for the Subcommittee on Fiscal Policy, Joint Economic Committee (Washington, D.C.: Government Printing Office, July 8, 1973). The Bernstein-Shkuda-Burns study focuses on the "notches" in the programs, *i. e.*, the points at which small increases in work income produce greater reductions in benefit payments because of failure to account for

taxes and work expenses.

> There are serious notches for the intact family on home relief. . . . When the intact family's gross income increases from $3,000 to $4,000, equal to a $691 gain in disposable income when taxes and work expenses are taken into account, welfare benefits are reduced by $922. A further income increase to $5,000, a $773 gain in disposable income, results in the loss of a $632 welfare grant.

Id. at 4. Elaborating further, the authors note:

> When moving into employment (earning $4,160 annually) after training the Home Relief family of four has a net gain of only $279 over the amount it would receive from welfare. Further, the family's disposable income does not increase as earnings rise from $4,160 to $5,000. In fact, as earnings increase from $4,160 to $5,000, disposable income declines from $4,191 to $4,002. The disincentive for the family head who has not gone through a training program and therefore does not benefit from the $30 disregard is even more severe; annual earnings of $5,160 would leave him with a disposable income of $3,831, or somewhat less than he would receive if wholly dependent on welfare. Further, earnings of $4,500 or $4,700 also yield less disposable income than complete dependence on welfare. At the $5,000 level, the Home Relief family, whether benefiting from the $30 disregard or not, has only $90 more in annual disposable income than by relying solely on assistance. . . .

Id. at 28.

> The relevant data for the intact family make it strikingly clear that there is practically no advantage . . . to the intact four-person family in increasing earnings from zero up to $7,000 gross

income in relation to the basic social programs including medical assistance. At various points on the income scale it is worse off. Such a family ends up with only $180 more per year if it earns $3,000 that if it has no earnings. Because of the notch in the public assistance program at $4,000, the family which moves from zero earnings to gross earnings of $4,000 is slightly worse off and if it moves from $3,000 to $4,000 it loses about $230 in the process. The notch in the medicaid program at $5,000 due to rules regarding outpatient care results in a net loss of about $200 for the family which raises its earnings from zero to $5,000. At best, if the family is living in subsidized housing, it will be $144 better off with earnings of $5,000 than with no earnings at all.

Even at $6,000 of earnings the family with "average" medical costs of $1,200 will be no better off than at zero earnings and at $7,000 it will only have about $200 more a year. Only if the family's medical expenses are substantially less than average does it make any substantial gain by increasing its income from $6,000 to $7,000.

As earnings increase above $8,000, the family does, of course, obtain a larger net benefit from each $1,000 increase in income, and the difference in the level of living achieved by those with earnings of $8,000 or more and those relying exclusively on social programs becomes significant. *But for those who, because of limited education and skills, or because of discrimination, or other reasons, are unable to earn more than $6,000 to $7,000 per year, the present set of eligibility criteria for benefits from the major social programs does not provide any incentive to increase income. In fact, the result is quite the contrary.*

Id. at 140–42 (emphasis added).

The authors conclude:

> In summary, one is led to conclude that the benefits from the package of social programs available to New Yorkers under current rules and regulations constitute a disincentive to the acceptance of relatively low-paying or even not so low-paying jobs. Further, they are a disincentive to increasing family income by working longer hours or by a second adult in the family entering the labor market unless the family can look forward to achieving an income of more than $8,000 a year. Indeed, the notch problems present in each of *the programs tend to accumulate and to reinforce the disincentive effect.*

Id. at 146 (emphasis added).

The figures used in this study are dated. Since 1972, benefit levels in all programs have increased, as have wage levels, City, State, and Social Security tax rates, mass transit fares, and other work-related expenses. These changes have all inured to the relative detriment of the working poor family vis à vis the unemployed welfare recipient. Wage increases are still matched by benefit loss; but increases in expenses over the ceiling result in even greater losses of disposable income. *See*, Senator William T. Smith, "Public Welfare—the 'Impossible' Dream," Address presented at the County Officers Association of the State of New York 1975 Annual Fall Seminar, September 22, 1975 (citing inequities and disincentives, using more recent figures).

(2) Empirical Studies

The work response of Home Relief recipients to the disincentives described apparently has not been systematically studied. However, studies of other programs in which benefit loss cancels out added earned

income have found sharp reductions in work. A 1960 study of Social Security recipients demonstrated that the imposition of a reduction in benefits for men earning more than a specified amount caused men reaching age 65 to drop out of the labor force "at a precipitous rate." See V. Burke and A. Townsend, "Public Welfare and Work Incentives: Theory and Practice" in Studies in Public Welfare, Paper No. 14 prepared for the Subcommittee on Fiscal Policy, Joint Economic Committee 31 (Washington, D.C.: Government Printing Office, April 15, 1974). At age 72, when the penalty is removed, labor force participation increased. In the absence of other compelling reasons, the study concluded that the elimination of the tax on earnings caused more people to work. *Id.*

A separate study of Social Security found that in 1965, when the amount of earnings exempt from benefit loss was raised from $1200 to $1500, about 10% of both male and female Social Security retirees increased their earnings from just below $1200 to just below $1500. The author attributed this $300 earnings jump to the removal of the tax on this sum. W. Vroman, Older Worker Earnings and the 1965 Social Security Amendments (Washington, D.C.: U. S. Department of Health, Education and Welfare, Social Security Administration, Office of Research and Statistics, Report No. 38, 1971) summarized in Burke and Townsend, *supra* at 31–32.

Similar findings were made in a recent study of Unemployment Insurance in Wisconsin. *See*, R. Munts, "Partial Benefits in Unemployment Insurance: Their Effect on Work Incentive," 4 Journal of Human Resources 160–76 (Spring 1976) summarized in Burke and Townsend, *supra* at 32. Under that program full benefits were paid so long as the claimant earned less than one

half the benefit amount. At the half way point benefits were reduced to one half until earnings equalled the full benefit amount, at which point benefits ceased. Thus combined earnings and benefits were maximized at earning levels just below half the weekly benefit and just below the full weekly benefit. Analysis of the distribution of earnings of applicants for partial benefits in Wisconsin found that earnings were bunched at these points. "This suggests that these U.I. claimants could have worked more but were reluctant to have additional earnings serve only to offset their U.I. benefits dollar for dollar." Burke and Townsend, *supra* at 32.

If such earning reductions occurred in all welfare programs, then the disincentives built into the Home Relief program could be constitutionally justified as a necessary by-product of a legitimate policy of income maintenance. But economic theory recognizes, and behavioral research corroborates, that welfare programs can be designed without diminishing the natural inclination of participants to increase income beyond mere subsistence through paid employment.

Economic analysis posits that the imposition of a benefit loss or tax rate on earnings substantially less than 100% (say 50%) may have either of two opposite effects on the behavior of a welfare recipient: (1) a *substitution* effect inducing substitution of leisure for work and (2) an *income* or marginal dollar effect, reducing the individual's ability to afford leisure and encouraging greater work efforts. For discussions of the income and substitution effects in economic theory, *see, e. g.*, Burke and Townsend, *supra* at 9–10; I. Garfinkel, "Income Transfer Programs and Work Effort: A Review" in Studies in Public Welfare, Paper No. 13 prepared for the Subcommittee on Fiscal Policy, Joint Economic Committee

(Washington, D.C.: Government Printing Office: Feb. 18, 1974).

A benefit loss rate of 100% or more—as in Home Relief—wipes out the income effect, since no marginal dollars can be earned by increased work effort. Work reduction is the only rational response. But for benefit loss rates below 100% economic theory is consistent with behavior changes in either direction. Which force actually predominates is an empirical question which can be answered only by analysis of actual work patterns of recipients and potential recipients. *See, e. g.*, V. Burke and A. Townsend, "Public Welfare and Work Incentives: Theory and Practice" in Studies in Public Welfare, Paper No. 14 prepared for the Subcommittee on Fiscal Policy, Joint Economic Committee 8 (Washington, D. C., Government Printing Office, April 15, 1974).

The most significant available study of the effects of variable minimum guarantees and benefit-loss rates on work effort is the New Jersey Income Maintenance Experiment, which ran for three years beginning in August, 1968. *See*, Summary Report: New Jersey Graduated Work Incentive Experiment (U.S. Department of Health, Education, and Welfare, December, 1973) for a detailed report of the experiment; *see also* Burke and Townsend, *supra* at 33–35; I. Garfinkel, "Income Transfer Programs and Work Effort: A Review" in Studies in Public Welfare, Paper No. 13, Subcommittee on Fiscal Policy, Joint Economic Committee (Washington, D.C.: U. S. Government Printing Office, Feb. 18, 1974); S. R. Wright and J. D. Wright, "Income Maintenance and Work Behavior," 6 Social Policy 24 (1975). The experiment divided male-headed families whose normal income fell below 150% of the poverty line into eight different welfare programs and a control

group that received no benefits. The programs were designed with varying minimum guarantee levels and benefit-loss rates ranging from 30- to 70 percent. The researchers found extremely small differences in average hours worked between experimental and control group husbands and no significant differences in the percentage of husbands who did not work at all during any of the three years of the experiment:

> The most striking features of the results for husbands . . . are that all of the differentials are quite small in both absolute and relative terms—none exceed 10 percent of the control means and most are less than five percent— and all are statistically insignificant . . . There are no findings here to indicate a significant reduction in labor supply resulting from the experimental payments. Moreover, many of the differentials, including all of those for blacks, are positive, indicating greater labor supply among husbands in the treatment group than in the control group. Finally, it is worth noting that the means for both groups indicate that the vast majority (approximately 95 percent) of the husbands were labor force participants who when employed worked close to full-time (37 to 40 hours per week).

Summary Report, *supra*, at 19–20.

The absence of significant reductions may be attributed, at least in part, to the fact that under the negative income tax plans studied, earnings result in net increases in income. *Id.* at V, 5. The evidence thus lends substantial empirical support to the proposition that at tax rates below 100%, the theoretical work-reducing "substitution" effect is counterbalanced by a work-increasing "income" effect. This is particularly true for male heads of households—representing the group characteristi-

cally receiving Home Relief. The experiment found more significant levels of work reduction among experimental group wives (although in absolute terms these reductions were also small). *Id.* at 32–35. The authors conclude:

> To the extent that the results of the experiment can be generalized to the national low-income population, they indicate that a national program of income-conditioned transfers, at the benefit levels considered here, would have only relatively small effects on the labor supply of male family heads.

Id. at 32.

Additional evidence supports the New Jersey findings. At least two studies have attributed increases in the employment rates of AFDC recipients to 1967 amendments to the Social Security Act (42 U.S.C. §§ 602(a)(7), 602(a)(8)(A)) allowing recipients who have received benefits within four months prior to employment to deduct, as a work incentive, the first $30.00 of monthly gross earned income plus one-third of the remainder in determining the assistance grant. *See* G. Appel, Effects of a Financial Incentive on AFDC Employment: Michigan's Experience Between July 1969 and July 1970 (Minneapolis' Institute for Interdisciplinary Studies, March 1972); V. Smith, Welfare Work Incentives, Studies in Welfare Policy, No. 2 (Lansing: Michigan Department of Social Services, 1974), summarized in W. Bell and D. Bushe, Neglecting the Many, Helping the Few: the Impact of the 1967 Work Incentives at 15–21 (Center for Studies in Income Maintenance Policy, New York University School of Social Work, 1975); *but see* M. Rein, Work or Welfare? Factors in the Choice of AFDC Mothers, Ch. 4 (1974).

Cross-sectional studies using econometric

analysis of labor market response to variable wage rates and levels of unearned income to project work response to different income transfer programs have concluded that, at tax rates below 100%, changes in work effort would be small. *See* Garfinkel, *supra* at 16–20 for a review of this literature.

Finally, 1971 Census data on employment demonstrate high levels of positive attachment to the labor force for both male and female heads of poor families. M. Barth, G. Carcagno, J. Palmer, Toward an Effective Income Support System; Problems, Prospects and Choices 61 (1974).

These results are consistent with general assumptions about the reluctance of most people to give up the sense of independence and pride that comes with a paying job. Recent attitude surveys find positive work orientations among the poor. *See* L. Goodwin, Do the Poor Want to Work? (Washington, D.C.: Brookings Institution 1972). Goodwin surveyed more than 4,000 persons through a questionnaire designed to measure a variety of attitudes bearing on work orientation. The survey included long-term AFDC mothers and their teenage sons; short-term AFDC mothers and teenage sons; upwardly mobile black working families in "outer city" areas who had escaped the ghetto through employment; white families in the same outer city census tracts; and welfare recipients enrolled in a national work training program called the Work Incentive Program.

Briefly, in comparing welfare and nonwelfare respondents, Goodwin found no statistically significant differences in the work orientation of mothers (*id.* ch. 3), teenage sons (*id.* ch. 4) and fathers (*id.* ch. 5). Significantly, these findings were not qualified by length of time spent on welfare. Goodwin notes:

> Teenage males who have spent virtually their entire lives on welfare have certain positive orientations toward work. Having no working parent in the home—neither mother nor father—has made the sons' identification with work no weaker than that of sons from families with working fathers . . . . Welfare youths from fatherless homes show a strong work ethic, a willingness to take training, and an interest in working even if it is not a financial necessity. . . . The welfare experience has not destroyed the sons' positive orientations toward work.

Id. at 68.

These findings are summarized as follows:

> Evidence from this study unambiguously supports the following conclusions: poor people—males and females, blacks and whites, youths and adults—identify their self-esteem with work as strongly as do the nonpoor. They express as much willingness to take job training if unable to earn a living and to work even if they were to have an adequate income. They have, moreover, as high life aspirations as do the nonpoor and want the same things, among them a good education and a nice place to live. This study reveals no differences between poor and nonpoor when it comes to life goals and wanting to work.

Id. at 112. Numerous other studies have found additional empirical evidence of positive work orientations among the poor. *See generally* sources cited in Goodwin at notes 15–20, Ch. I.

The upshot of these studies is that the poor want to work and do work given the most marginal incentive. The financial penalties for earned income built into the

Home Relief program are irrational and unjust. They put pressure on those who desire the status of workers to subsist instead solely on welfare. The challenged discrimination thus in no way serves, and may be antithetical to, legitimate employment policies.

E. Family Stability

The $80 work expense ceiling exacerbates the welfare system's inherent discrimination against intact families. Single-parent AFDC families, for example, are entitled to full work expense deductions. 42 U.S.C. § 602(a)(7); *see Shea v. Vialpando*, 416 U.S. 251, 94 S.Ct. 1746, 40 L.Ed.2d 120 (1974). As noted above, 1967 Social Security amendments provided $30 and one-third monthly income disregards for AFDC mothers who have received benefits within four months prior to employment. 42 U.S.C. §§ 602(a)(7), 602(a)(8); 45 C.F.R. 233.-20(a)(11)(ii)(b). As a result, female-headed single-parent families fare much better under AFDC than do intact families on Home Relief and intact families ineligible for any assistance. Focusing on these inequities the authors of the Bernstein-Shkuda-Burns study observe:

> One fact comes through clearly: Even though New York, unlike some States, has a general assistance program for the intact family, such a family, on the whole, fares worse than the female-headed family; this is true even though the medicaid benefits tend to moderate the inferior public assistance benefit available to the intact family, as do the benefits available from subsidized housing and day care. But both the intact family and the "regular" female-headed household obtain substantially smaller benefits than the female-headed family with the $30 and one-third disregard. The effect of this disregard and the benefits available

to a welfare family from food stamps, school lunches, and medicaid are such that with gross earnings of $5,000, the intact family has a disposable income plus benefits of $5,363, the regular female-headed family has $5,892, and the "$30 and one-third" female-headed family has $7,246. The relative benefits are a bit higher for the intact family than for the regular female-headed family at the $6,000 to $7,000 levels because its somewhat higher medical costs are partially covered. But while both types of families with gross earnings of $7,000 have a disposable income plus benefits (other than housing and day care) of $5,780 and $5,675 respectively, the "$30 and one-third" female-headed family has $7,913.

. . . . . .

It is worth pointing out that the female-headed family entitled to the $30 and one-third disregard is in a privileged position not only with respect to other types of families on public assistance but in relation to families not eligible for public assistance. Thus, a female-headed family in which the mother is earning $7,000 per year obtains a disposable income plus benefits from public assistance, food stamps, school lunches, and Medicaid of about $7,900 per year. The non-public assistance family with earnings of $7,000 eligible at this income level only for a small amount of medical assistance, would be left with a disposal income plus benefits of only about $5,800. Or put another way, the ordinary family would need gross earnings of about $10,000 to achieve the same standard of living as the female-headed AFDC family earning $7,000. If the female-headed family has earnings of $7,000 and is also benefiting from housing subsidies and has one child

in a day care program, its disposable income plus benefits amounts to $11,300 which is equal to gross earnings of almost $15,000.

Bernstein, *et al., supra* at 146–47.

The system thus exerts pressure on the families of the working poor—whether on or off Home Relief—to dissolve. It further acts as a deterrent to the formation of family units. A recent federally funded study of some 500 AFDC mothers in New York City confirms this. B. Bernstein and W. Meezan, The Impact of Welfare on Family Stability (Center for New York City Affairs, New School for Social Research: June 1975). Fourteen percent of those interviewed expressly stated that the decision to break up their family or relationship had been influenced by the availability of welfare. The authors estimate that even more respondents, roughly 21 percent, were actually influenced. *Id.* at 98–99. Most significantly, welfare benefits were found to influence a higher percentage of respondents and to play a more influential role relative to other factors causing break-up where the welfare grant was more than or equal to the husband's or man's earnings (approximately 44 percent of the cases). *Id.* at 79, 97. Previous or current receipt of welfare was also found to be clearly related to the extent to which the decision to separate is influenced by the availability of welfare. *Id.* at 80–81. Thus the working poor presently on Home Relief are subject to the greatest pressures to dissolve intact families. The $80 ceiling—by increasing disparities between Home Relief and AFDC—necessarily increases these pressures. As Bernstein and Meezan put it, "Such discrimination makes no sense in a society which places high value on the family and recognizes its essential contribution to economic and social well-being." *Id.* at 105.

F. Cost Savings

Reductions in program costs are the only conceivable benefit which may result from the work expense ceiling. As pointed out above, cost savings alone do not justify an otherwise arbitrary classification. But beyond this, the amount actually saved by this limitation on work expense deductions is entirely problematic. The state has informed the court that the Department of Social Services has no figures from which to estimate the financial impact of eliminating the ceiling. Moreover, a major recent economic analysis of the cost of welfare programs strongly suggests that the ceiling is increasing the expense of the Home Relief program by discouraging recipients from earning additional income. See S. A. Rea, Jr., "Trade-Offs Between Alternative Income Maintenance Programs" in Studies in Public Welfare, Paper No. 13 (U.S. Government Printing Office, Washington, D.C.: February 18, 1974). Using a 1967 cross-sectional labor force survey linking wage rates and unearned income to hours worked, Rea found that, all other factors being equal, when projected work responses are taken into account, an income transfer program with a benefit loss rate of 67% produces *lower* budget costs than programs with benefit-loss rates of 100%, 50%, and 33%. Reducing tax rates below 67% swells costs by expanding eligibility into more densely populated higher income brackets. Raising the benefit-loss rate to 100% greatly increases in program costs because the extreme work disincentive causes a high percentage of recipients to reduce earnings. *Id.* at 50.

To some extent earnings reductions can be policed by rigorous enforcement of section 131(5) of the Social Services Law with its registration and employment requirements. But that statute cannot reach such

rational behavior as choosing a lower paying job, avoiding optional overtime, refusing a second job, or preventing other family members from taking paid employment. *See* Bernstein *et al., supra* at 146.

Certainly, some positive economic incentives may flow from the ceiling. Some families may be able to reduce transportation expenses by moving closer to work; others may be influenced to use cheaper day care facilities. But these are the exceptions; all the other expenses enumerated in 18 NYCRR § 352.19 are outside the employee's control, except those directly related to income. For the average worker reducing earnings is the only available means of reducing work expenses.

If New York had been interested in eliminating unnecessary work expenses, it could have applied individual ceilings to the few items subject to employee control (as is presently the case with meals). That the statute applies to all expense items, including involuntary payroll deductions, unmistakably stamps it as a wholly arbitrary means of reducing benefits.

G. Summary

The inability of poor people to earn incomes above the subsistence level is, in part, a function of inadequate education and training, discrimination, and structural unemployment within the economy. Poor families, like middle-class and rich families, break up because of emotional stress, drug addiction, alcoholism and other difficulties. Pressures associated with poverty add to burdens on the less affluent. But, as the studies demonstrate, the welfare system in general and the work expense ceiling in particular contribute significantly to inducing people not to work and to destroying families.

The working poor probably represent that segment of our society most victimized by present welfare policies. Data collected recently by the University of Michigan Survey Research Center demonstrate that among poor families with children, those headed by able-bodied, working-age males are least likely to receive transfer payments under any program and most likely to remain poor if they do receive benefits. M. C. Barth, G. J. Carcagno, J. L. Palmer, Toward an Effective Income Support System: Problems, Prospects, and Choices 24–29 (1974). Employable recipients are most subject to pressures to misreport income and to accept a cash-paying job—possibly in an illicit occupation—rather than one covered by Social Security. *See* Introduction, Income Transfer Programs: How They Tax the Poor in Studies in Public Welfare, Paper No. 4, prepared for Subcommittee on Fiscal Policy, Joint Economic Committee vi-vii (Washington, D.C.: Government Printing Office, April 18, 1974). Employed recipients routinely suffer work disruptions and lost pay in order to cope with welfare bureaucracy. *See* New York Times, July 14, 1976, at 41 col. 1.

In strict terms, these observations do not bear on the narrow constitutional issue before us. It is enough that the challenged statute arbitrarily discriminates between applicants and recipients for no purpose other than possible short term reductions in program cost. But the studies do underscore the urgency of the question. We are dealing with real human deprivation in its most basic dimensions.

Discrimination against the working poor and against intact families transcends the narrow question of the validity of the work expense ceiling. It is at the heart of all serious discussions of welfare reform. *See generally* M. C. Barth, G. J. Carcagno, J. L.

Palmer, Toward an Effective Income Support System: Problems, Prospects and Choices (1974); H. Aaron, Why is Welfare So Hard to Reform? (1973); D. P. Moynihan, Politics of a Guaranteed Income (1973); V. and V. Burke, Nixon's Good Deed, Welfare Reform (1974); New York Temporary State Commission to Revise the Social Services Law, Recommendations made to the 94th Congress and the 1976 New York State Legislature on Public Welfare Programs. The authors of the Bernstein-Shkuda-Burns study stress that inequities run throughout all the interrelated welfare programs. They conclude with the following indictment of the system:

> In summary, the present package of social programs does not provide equity among the different types of families on public assistance or between those who are and those who are not on public assistance; nor does it produce incentives to increase income for those whose earnings potential may be limited.
>
> It must also be stressed that the bewildering variety of criteria for eligibility, the differences in the definition of income and of income disregards for various programs, and the varying procedures for verifying income, resources, and other aspects of eligibility—some strict and some loose—fail to assure either that everyone will understand what he is entitled to receive or that those not entitled to benefits will in fact be denied them.
>
> Finally, it must be noted that the variety of policymaking bodies involved at the Federal, State and local levels, each with some authority to determine the rules which will govern the criteria for eligibility and the nature of the administration, has led to serious inconsistencies in the rationale for deciding who should benefit

and to what degree from various programs.

Bernstein *et al., supra* at 147.

V. Conclusion

The present welfare system is shot through with inequities and irrational distinctions. *Cf., e. g.,* Liebman, The Definition of Disability in Social Security Income: Drawing the Bounds of Social Welfare Estates, 89 Harv.L.Rev. 833 (1976). Yet, although the system badly needs reform, changing the status quo, with all its entrenched beneficiaries, will not be easy. *Cf.* Tribe, Structural Due Process, 10 Harv.Civ. Lib.L.Rev. 269, 315 (1975).

Welfare issues involve federal, state and municipal laws and bureaucracies, enormous fiscal implications, conflicting pressure groups, and a lack of consensus as to basic purposes. *Cf.* I. Garfinkel, An Overview Paper in M. C. Barth, G. J. Carcagno, J. L. Palmer, Towards an Effective Income Support System 153–160 (1974). Reforming the system is thus primarily a task for Congress and the state and municipal legislatures, not the courts.

While continuing legislative failure to eliminate deep-rooted inequities may constitute a violation of constitutional rights, we should avoid, if at all possible, placing the process under judicial sanction. *Cf. Robinson v. Cahill,* 67 N.J. 333, 339 A.2d 193 (1975). But the courts should not remain silent where, as here, no rational justification consistent with any conceivable state policy can explain a blatant discrimination.

An injunction against future application of the work expense ceiling is an entirely appropriate remedy for the violation of plaintiffs' rights to equal protection under the laws, fully consistent with the limited judicial role prescribed in *Dandridge*. This relief would terminate a particularly harsh inequity while leaving the complex task of restructuring the welfare laws to the appropriate legislatures.

I would grant plaintiffs relief.

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

LEVAN ROUNDTREE and DELORES ROUNDTREE, individually, on behalf of their minor children and all other persons similarly situated,

Plaintiffs,

- and - 75-C-1052

JOHN FOLSOM, VICTORIA FOLSOM, VINCENZO PELLIGRINO, and ANNA PELLIEGRINO, Applicants to Intervene as Plaintiffs on behalf of themselves and their minor dependent children,

- against -

STEPHEN BERGER, individually and as Acting Commissioner of the New York State Department of Social Services, JAMES DUMPSON, individually and as Commissioner of the New York City Department of Social Services, and THE NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES,

Defendants.

This action on behalf of plaintiff and all others similarly situated, challenging the constitutionality of

New York State Social Services Law §131(i) and 18 NYCRR §325.19(c), came on for a hearing before a three-judge court consisting of Honorable Thomas J. Meskill, United States Circuit Judge, Honorable Mark A. Costantino, United States District Judge, and Honorable Jack B. Weinstein, United States District Judge, and a memorandum and order of Honorable Thomas J. Meskill, United States Circuit Judge, and the Honorable Mark A. Costantino, United States District Judge, having been filed on September 17, 1976 denying plaintiffs' motion for a permanent injunction and dismissing the complaint and directing the Clerk to enter judgment, and a dissent by Honorable Jack B. Weinstein, United States District Judge having been filed, it is

ORDERED and ADJUDGED that the plaintiff take nothing of the defendants and that the plaintiffs' motion for a permanent injunction is denied and the complaint dismissed.

Dated: Brooklyn, New York
September 20, 1976

/s/ Lewis Orgel
Clerk

FILED

IN CLERK'S OFFICE

U.S. DISTRICT COURT E.D.N.Y.

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APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF NEW YORK

LEVAN ROUNDTREE, and
DELORES ROUNDTREE,
individually on behalf
of their minor children
and all other persons
similarly situated,

Plaintiffs,

- and -

JOHN FOLSOM, VICTORIA
FOLSOM, VINCENZO
PELLIGRINO, and ANNA
PELLIGRINO, on behalf
of themselves and their
minor children,

Plaintiff-
Intervenors,

- against -

STEPHEN BERGER, individually
and as Commissioner of the
New York State Department
of Social Services, JAMES
DUMPSON, individually and
as Commissioner of the New
York City Department of
Social Services and THE
NEW YORK STATE DEPARTMENT
OF SOCIAL SERVICES,

Defendants-
Appellees.

CIVIL ACTION
No. 75-C-1052

THREE-JUDGE-
COURT

MESKILL, C. J.

WEINSTEIN, J.

COSTANTINO, J.

NOTICE OF APPEAL TO
THE SUPREME COURT OF
THE UNITED STATES

Notice is hereby given that LEVAN ROUNDTREE and DELORES ROUNDTREE individually, on behalf of their minor children and all other persons similarly situated, and JOHN FOLSOM, VICTORIA FOLSOM, VINCENZO PELLIGRINO, and ANNA PELLIGRINO, individually and on behalf of their minor children, the plaintiffs and plaintiff-intervenors above named hereby appeal to the Supreme Court of the United States from the judgment of the United States District Court for the Eastern District of New York, Three-Judge-Court, entered in this action on September 20, 1976, which denied appellants' motion for a permanent injunction against enforcement of New York Social Services Law Section 131(i) and Title 18 New York Code of Rules and Regulations Section 352.19(c) and dismissed their complaint.

This appeal is taken pursuant to 28 U.S.C. §1253.

/s/ Lloyd Edward Constantine

JOHN C. GRAY, JR.
LLOYD CONSTANTINE,
Of Counsel
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Plaintiff-Intervenors and
Class Members
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Dated: November 12, 1976
Brooklyn, New York

TO: LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
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STEPHEN BERGER and THE NEW YORK
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JAMES DUMPSON

LEWIS ORGEL
Clerk
United States District Court
Eastern District New York
United States Courthouse
Cadman Plaza
Brooklyn, New York

FILED

IN CLERK'S OFFICE

U.S. DISTRICT COURT E.D.N.Y.

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U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

APPENDIX D

18 NYCRR §352.19:

Expenses incident to employment.
(a) The following expenses incident to employment shall be deducted from gross earnings:

(1) All non-personal work expenses such as union dues, cost of tools, materials, uniforms and other special clothing required for the job, mandatory fees for licenses or permits fixed by law.

(2) All personal work expenses such as Federal, State and local taxes, social security taxes, group insurance, child care, meals, and transportation.

(i) For ADC recipients who have earnings as a result of public or private employment or on the job training, the cost of day care in a day care center, in a family home or in-home day care shall be deducted as an expense incident to employment. In instances where this results in expenses exceeding income, the difference between the expenses incident to employment and income shall be considered as an item of need and shall be applied in determining the total needs of the household.

(ii) For HR recipients who have earnings from employment, the cost of day care in a day care center, in a family home, or in-home day care shall be deducted as an expense incident to employment, provided the total personal, non-personal, and special work expenses necessary and incident to employment, including the cost of day care, does not exceed $80

per month. In those instances where the cost of day care results in total expenses incident to employment exceeding $80 per month, the cost of day care shall be provided as a purchase of service.

(iii) The allowable deduction for meals incident to employment shall be in accord with the following schedule:

SCHEDULE SA-8

Lunch	$1.00
Dinner	$1.45

(iv) The allowable deduction for the use of a recipient owned motor vehicle shall be computed on a mileage basis at the same rate paid to employees of the social services district; the use of a motor vehicle shall be allowed only in the case of absence of public transportation.

(b) Special work expense. A special work expense shall be deducted from the gross income of a HR recipient for the purpose of meeting additional food, clothing and incidental expenses required by an employed person and other unpredictable expenses incident to employment as follows:

(1) minor--$40 per month;
(2) homemaker--$40 per month; and
(3) other employed persons-$20 per month.

If the wage earner is employed less than 20 working days per month, such amount shall be prorated, but in no instance shall the special work expense exceed available net earnings prior to the deduction.

(c) <u>Work expenses in HR cases. Notwithstanding the provisions contained in subdivisions (a) and (b) of this section, an allowance for all personal, non-personal and special work expenses necessary and incidental to employment shall in no case exceed $80 per month for an applicant for or recipient of home relief. The allowance provided herein shall not apply with respect to income earned by recipients of home relief in public work projects.</u>

(Emphasis added.)

In the

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-976

LEVAN ROUNDTREE, et al,

Appellants,

against

STEPHEN BERGER, individually and as Commissioner of the New York State Department of Social Services, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, et ano,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

MOTION TO DISMISS OR AFFIRM ON BEHALF OF APPELLEES STEPHEN BERGER AND NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

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IN THE

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OCTOBER TERM, 1976

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against

STEPHEN BERGER, individually and as Commissioner of the New York State Department of Social Services, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES, et ano,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

MOTION TO DISMISS OR AFFIRM ON BEHALF OF APPELLEES STEPHEN BERGER AND NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

Appellees Stephen Berger and New York State Department of Social Services move pursuant to Rules 16 and 14(2) of the Rules of this Court for dismissal of the appeal from the judgment of the United States District Court for the Eastern District of New York, entered September 30, 1976, dismissing the complaint. In the alternative, appellees move for affirmance of the judgment below.

Opinion Below

The opinion below is reported at 420 F. Supp. 282 (E.D.N.Y., 1976) and is reproduced in appellants' Jurisdictional Statement.

Jurisdiction

Appellants purport to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1253.

Statutes Involved

New York Social Services Law 131-i.

Title 18, New York Code of Rules and Regulations ("NYCRR") § 352.19c.

Questions Presented

1. Whether appellants' appeal should be dismissed because it was untimely docketed?

2. Whether New York's $80 ceiling on work related expenses deductions for "home relief" recipients violates the Equal Protection Clause?

Statement of the Case

Appellants are claimants under the New York State Home Relief program. The program is state funded and provides assistance to persons ineligible for federally funded programs. Under the program a standard of need is determined according to the number of persons in a household.

If no member of the household is employed, the household receives a grant equal to the standard of need. If

a member of the household is employed, the household receives a cash allowance to supplement the earnings. The allowance is equal to the difference between the standard of need and the net earned income of the household after deduction of work-related expenses.*

This case concerns a state law limitation on the amount of work-related expenses which may be deducted. Under the provisions challenged by appellants, the maximum which can be deducted for work-related expenses is $80 per month.

Appellants claim the $80 limit on deductions violates their rights to equal protection of the law. They purport to represent classes of people (a) with work-related expenses of more than $80 whose net income would result in eligibility for home relief but for the statutory limitation; and (b) with work-related expenses for more than $80 but whose benefits are reduced by the $80 limitation.

POINT I

The appeal must be dismissed for appellants' failure to timely docket the appeal.

Appellants have docketed their appeal out of time. The notice of appeal was dated November 12, 1976; the case was docketed January 14, 1977, some sixty-three days later. Since the time for docketing the appeal is only 60 days in this case (Supreme Court Rule 13[1]), appellants are three days out of time. The motion to dismiss this appeal pursuant to Rule 14(2) of this Court should be granted. As this Court has said, ". . . if there are to be

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* These expenses include (1) all non-personal work expenses such as union dues, costs of tools, materials, uniforms, and other special clothing; (2) all personal work expenses such as federal, state, and local taxes, group insurance, meals, and transportation; and (3) an allowance of $20 per month as a "special work expense."

rules, there must be some limit to our willingness to overlook their violation." *Pittsburgh Towing Co.* v. *Mississippi Valley Barge Line Co., et al.,* 385 U.S. 32 (1966). See *Shapiro* v. *Doe,* 396 U.S. 488 (1970) (appeal from three-judge court decision dismissed where appeal docketed two days late).

POINT II

The $80 ceiling on work-related expenses deductions for New York Home Relief recipients does not violate equal protection of the laws.

In finding that the $80 limitation on work expenses deductions did not violate the Equal Protection Clause, the majority below did nothing more than apply established principles of law to an uncomplicated set of facts.

There being no "suspect" class involved, the majority properly applied the traditional "rational basis" test and found that the State's desire to conserve limited public resources was sufficient to sustain the statute. *Massachusetts Board of Retirement* v. *Murgia,* 96 S. Ct. 2562 (1976); *Dandridge* v. *Williams,* 397 U.S. 471; *Jefferson* v. *Hackney,* 406 U.S. 535 (1972); *Frontiero* v. *Richardson,* 411 U.S. 677 (1973). This conclusion was correct. Conservation of limited public resources has long been specifically recognized as a legitimate state interest. E.g. *James* v. *Strange,* 407 U.S. 128, 141 (1972); *Shapiro* v. *Thompson,* 394 U.S. 618 (1969).

Appellants assert that any such state interest does not save the statute because the $80 limitation is arbitrary and creates an invidious distinction among classes of Home Relief claimants; in short it is argued that the limitation is not a "principled" method of cost containment. This is simply not true. Far from being "arbitrary," the $80 limitation was based on an average, as appellants themselves

admit (Jurisdictional Statement, 26). The figure of $80 did not come out of the blue. Clearly if a line was to be drawn this was a fair and reasonable level at which to draw that line. Averaging has been upheld by this Court as a proper means of establishing benefits levels, even though some recipients may be adversely affected by the averaging. *Rosado* v. *Wyman,* 397 U.S. 397, 419 (1970).

This Court stressed in *Dandridge* that "in the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." *Dandridge, supra,* at 485; *Jefferson* v. *Hackney, supra,* at 546. It is not grounds for holding New York's $80 ceiling unconstitutional because it is imperfect or has harsh side effects on some individuals.

Appellants would no doubt complain no matter where the line was drawn. Appellants' argument taken to its logical conclusion would result in the proposition that no work expenses ceiling of any kind could be imposed. This is absurd since appellants themselves admit that the State is not obliged to provide *any* deductions for work expenses. See Appendix to Jurisdictional Statement, p. 6. Having chosen to provide deductions the State is certainly not obliged to provide *all* deductions. Necessarily, "every line drawn by a Legislature leaves some out that might have been included." *Village of Belle Terre* v. *Boraas,* 416 U.S. 1, 8 (1973). This does not mean that the line may not be drawn.

The work expenses deduction ceiling here is analogous to the flat grant limitations upheld by this Court in *Dandridge.* This Court in *Dandridge* rejected an equal protection argument that the flat grant discriminated against larger families. The same principles enunciated in *Dandridge* as supporting the constitutionality of the flat grant are clearly applicable here. Similarly this Court has held

that the States need not pay a full "standard of need" in public assistance cases but may pay only on a percentage basis to accommodate budgetary realities, so long as the actual standard of need is not obscured. *Rosado* v. *Wyman*, *supra*, at 413. Under this principle there is no reason in logic why New York may not put a reasonable limit on work-related expenses deductions in its Home Relief program.

In focusing on the objective of conserving resources as a rational purpose of the work expenses deductions ceiling, appellants have failed to point out that there are other rational bases for the statutes in question. Imposing a limitation on work expenses deductions encourages economy and efficiency in employment. Several work-related expenses, such as transportation, are peculiarly within the control of the recipient. The $80 ceiling is an incentive to reduce such expenses. By setting a realistic limit on work-related expenses, combined with sanctions (ineligibility) on those who voluntarily terminate their employment, the State encourages marginal workers to either work more efficiently or upgrade their employment qualifications.

Where several rational justifications for a statutory classification are apparent, a court's inquiry is at an end. The courts will not engage in an effort to ascertain the "primary" rational basis of a statute. *McGinnis* v. *Royster*, 410 U.S. 263, 274-276 (1973).

Clearly there are several rational justifications for the laws in question. On the principle that "[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it" *McGowan* v. *Maryland*, 366 U.S. 420, 466 (1961), the New York work expenses deduction ceiling is unquestionably constitutional.

The cases relied on by petitioner are inapposite. *Anderson* v. *Burson*, 300 F. Supp. 401 (D. Ga., three-judge court, 1968), involved a Georgia regulation which discriminated

on the basis of *source* of income and *character* of employment. No such discrimination is involved here.

The other case relied on by appellants, *Hein* v. *Burns*, 402 F. Supp. 398 (S.D. Iowa, 1975 three-judge court), was reversed by this Court on January 11, 1977 (*Knebel* v. *Hein*, No. 75-1261 and *Burns* v. *Hein*, No. 75-1355, 45 U.S.L.W. 4083). In *Hein*, this Court upheld against an equal protection attack regulations which permitted a variety of flat deductions and which treated a transportation allowance as "income" in determining eligibility for food stamp benefits. The issues here are identical and this Court's reasoning in *Hein* supports in every respect appellees' position in this case.

The thrust of appellants' argument stated in another way seems to be that the Constitution of the United States has been violated by this $80 ceiling because it allegedly operates as a work disincentive in a culture where a work ethic is fundamental. Assuming *arguendo* that the ceiling operates as a work disincentive and assuming *arguendo* that a work ethic is fundamental to our society, it does not follow that the $80 ceiling on work expenses deductions violates the Constitution. The States in administering their public assistance programs are entitled to wide latitude. *Dandridge* v. *Williams*, *supra*; *Jefferson* v. *Hackney*, *supra*. The States may pursue one policy objective at the expense of another, and the wisdom of a State in pursuing a particular course is not for the courts to judge. In *Lavine* v. *Milne*, 424 U.S. 577 (1976), this Court upheld a state law designed to screen out the "indolent few" even though it also imposed an assumed heavy burden on the "industrious indigent." *Lavine* v. *Milne*, *supra*, at 587. This Court said that "New York nevertheless prefers its chosen course; and it is not for this Court to assay the wisdom of that determination." *Id.* The same principle applies here with equal force. The essence of appellants' argument is that the $80 ceiling is unwise. Such an argument is addressed to the wrong forum.

The fact that the courts are the wrong forum is proved in spectacular fashion by the obviously labored dissenting opinion. The dissent arrived at its conclusion only after a lengthy exploration of numerous studies and literature on the impact of various welfare programs on work incentive. Such a task was peculiarly a legislative one. The studies cited by the dissent (none of which concerned the work expenses ceiling in this case) do not even lead to the unequivocal conclusions for which they are so cavalierly and freely cited. On the contrary, the studies are characterized by qualifications which indicate that the effect on work incentive of a given income transfer program may be uncertain; that the effect may be different on different groups of people; that an increase in work incentive may result in a sharp rise in program costs; that necessary data is incomplete and inadequate; and that reform requires an overhauling of a whole complex of related programs, not just an attack on one aspect of one program.* Clearly this is a classic case calling for legislative, not judicial judgment if there is any call for a change.

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* For example, in the Townsend-Burke paper cited by the dissent (A28, A30) we are told in the introduction (p. 2) that the actual effect of income maintenance programs on work behavior is "uncertain." The New Jersey Income Maintenance Study, said by the dissent to be the "most significant available study" of the effects of benefit loss rates on work effort (A30), concluded (according to the same Townsend-Burke paper, at p. 33) that, despite an unfavorable benefit loss rate, husbands did not substantially change their work patterns. One contributor to the Garfinkel paper (cited by the dissent at A29-30) concluded (at 96) that major improvements on these studies required more refined data and more complicated models. These are only a few examples of many of the qualifications and caveats contained in the studies and literature cited by the dissent.

CONCLUSION

This appeal from the judgment below should be dismissed. In the alternative, the judgment below must be affirmed.

Dated: New York, New York, February 9, 1977.

Respectfully submitted,

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Samuel A. Hirshowitz
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Ralph McMurry
Assistant Attorney General
of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-976

LEVAN ROUNDTREE, *et al.*,

Appellants,

v.

STEPHEN BERGER, individually and as Commissioner of the New York State Department of Social Services, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

Appellants submit this brief in opposition to the Motion To Dismiss or Affirm of Appellees Stephen Berger and The New York State Department of Social Services. Citations herein are to the Appendix of appellants' Jurisdictional Statement, (A-1 etc.).

I. The Justification For The Challenged Classification Asserted In Appellees' Motion To Affirm Is Invalid And Was Not A Basis Of The Decision Below

Appellees urge affirmance of the judgment below, contending that the majority properly applied the "rational basis" standard, sustaining the challenged statute after merely ascertaining that its purpose was to limit State expenditures. Appellees and the majority below assert that the rational basis

test requires only this inquiry. (A-8, ¶ 1).

If the rational basis test required only this inquiry, a welfare statute could, consistent with the equal protection clause, deny benefits to 'every third recipient on the welfare rolls." The dissent below found the challenged work expenses ceiling "as arbitrary" as such a classification. (A-21). Perhaps aware that the standard of "minimum rationality" requires more, appellees argue that the statute is sustainable on another basis. Appellees assert that the statute "encourages economy and efficiency in employment" by forcing workers to hold down their work expenses.

Appellees assertion so departs from reality that the majority below did not

even comment on this purported justification, which appellees also urged upon them. However, the dissent rejected this purported justification stating:

> If New York had been interested in eliminating unnecessary work expenses, it could have applied individual ceilings to the few items subject to employee control (as is presently the case with meals.) That the Statute applies to all items, including involuntary payroll deductions, unmistakably stamps it as a <u>wholly arbitrary</u> means of reducing benefits. <u>Dissent</u>, (A-39). (Emphasis added)

Appellant Roundtree's involuntary payroll deductions total $88.66 monthly. These alone exceed the expense ceiling. Appellant-Intervenor Folsom's monthly involuntary payroll deductions amount to $64.06, despite the fact that his income is so low that he pays no federal income tax. Dissent (A-16). While the ability of

the working poor to control other ordinary work expenses,[1] such as public transportation, is doubtful, it is beyond dispute that taxes, Social Security, union dues, permits, licenses, and other expenses are fixed costs. The only courses open to workers seeking to reduce taxes and Social Security assessments are to quit work, reduce work effort, avoid increased earnings, or commit welfare and tax fraud by taking a job which pays in cash and avoids mandated withholdings.

II. The Work Expense Ceiling Is Neither A Flat Deduction Nor An Averaging Method For Computing Benefits

1. These are all specifically enumerated and deductible as expenses incident to employment in 18 NYCRR §352.19(a). (A-51). They are fully deductible in New York's AFDC program and were fully deductible in the Home Relief program until 1971. (A-21, 22).

Appellees attempt to categorize the work expense ceiling as an averaging method or a flat deduction, akin to the measures sustained in Rosado v. Wyman, 397 U.S. 397 (1970) and Dandridge v. Williams, 397 U.S. 471 (1970). It is neither. New York does employ a flat grant in its Home Relief program, i.e., the statutory miminum subsistence level which all members of appellants' certified class live below. Appellees utilize a 1971 average as the basis of the expense ceiling, which is not a flat or fixed percentage deduction. The ceiling then operates to deprive appellants' class of the level of income provided as an outright flat grant to all unemployed recipients. (A-5, ¶ 2, A-11, ¶ 2). The statistical basis of the expense ceiling,

discussed at pages 26-28 of appellant's Jurisdictional Statement, led the dissenter to conservatively conclude that "it is doubtful that the present $80 figure accurately reflects the work-related expenses of the average New York worker otherwise eligible for Home Relief." (A-19).

III. The Court's Recent Decision In Knebel v. Hein Supports Appellants' Position

This Court's recent decision in Knebel v. Hein, 45 U.S.L.W. 4083 (January 11, 1977) fully supports appellants' position. In that case allowing a food stamp recipient to deduct the proceeds of a travel stipend would have discriminated against workers who did not receive such a stipend but incurred similarly non-deductible travel expenses. 45 U.S.L.W.

4085. In stark contrast, appellants are the only persons in New York, unemployed or working, denied the statutory subsistence level of income. Alleviation of the discrimination against appellants would merely raise their income to the level paid in outright grants to the unemployed, and would not introduce any new discriminations, as did the district court's order in Hein.

In Hein, this Court noted that the district court's order would result in "significant administrative costs" above those entailed in administering the Food Stamp Program's 10% deduction. 45 U.S. L.W. at 4085. The dissenter below noted that with the work expense ceiling, unlike a fixed percentage or flat deduction:

> there is no gain in administrative efficiency since the \$80 figure is only a ceiling and the administering social services worker must still compute the actual amount of work expenses in each case. (A-23).

The Court's understanding of the discriminations inflicted upon the working poor by welfare classifications, exemplified by its reasoning in Hein, supports appellant's position.

CONCLUSION

The issue should be considered by the Court after full briefing and oral argument.

Respectfully submitted,

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